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POLITICAL SCIENCE QUARTERLY

SOVIET PHILOSOPHY OF WAR*

OUTSIDE of Russia, very little is known about the ideas on war and warfare held by the controlling group in in the U.S.S.R., the Communist Party of Russia. It is true that a considerable amount of information is available regarding the great increase in the personnel and the remarkable improvement in the armament of the Red Army in recent years. Mr. Litvinov's suggestions as to disarmament, as well as the participation of Soviet Russia in the League of Nations and its efforts on behalf of peace, have also been widely publicized. No serious attempt has been made, however, in America to explain the theoretical background of the Soviet viewpoint with regard to war, nor to trace, in this connection, the motives behind the recent evolution in the Soviet attitude toward the League. That the Soviet thinkers have evolved a theory of warfare based not on military experience, but on Marxian dialectics, is hardly known even to those following closely the rapid course of events in Russia.

In some European countries the development of the theory of warfare has been more pronounced than in others. Germany has produced several remarkable exponents of military theory, of whom Napoleon's contemporary, General von

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Clausewitz, is probably the most important. France also holds a prominent place in the development of theoretical studies of armed conflict, although up to the beginning of the World War French military thought was too strongly dominated by Napoleonic ideas, or rather by Napoleonic campaigns, as they are known to military history, to contribute much of value to the development of theories adapted to modern conditions of warfare. British thinkers on military subjects tended less than the Germans or the French to theoretical speculation on the art of war, and their work followed more closely the practical lines of experience. The Russian pre-war school of military thought was on the one hand as much inclined to theorizing as the German, while on the other it was dominated by narrow interpretations of Suvorov's views, paralleling in this respect the worst aspects of Napoleon's worshippers among the French.

Generally speaking, however, not even the most "theoretical" military thinkers who had any influence in pre-war Europe ever dreamed of developing their theories without regard to past military experience. Military history, more or less recent, was their starting-point, and was the quarry from which they procured the foundation stones of their teachings.

This is not at all true of the new school of military thought which developed under the wing of the Soviet Communist Academy. Members of this school are inspired in their views on military strategy and tactics by the writings of the Communist Fathers—Karl Marx, Engels and Lenin. Their military theories are logically connected with, and a development of the Communist *Weltanschauung*—historic materialism.

It is very difficult to say at this time to what extent these new theories developed by the military group of the Communist Academy have actually influenced the strategy and tactics of the Red Army. In various other fields of Soviet endeavor, application of historic materialism resulted in a sort of superimposed varnish or coloring of consistency, and did not become an important creative factor. Probably only the participation of Soviet Russia in a military conflict will actually bring to light the real influence of Communist social theories on methods of warfare.

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The Soviet viewpoint as to war and warfare has gone through a very complicated evolution. In some respects the professions and practices of today are diametrically opposed to those held in the early years of the existence of the Soviet state, and one has really to deal not with a single viewpoint, but with the evolution of viewpoints.

It is possible, however, to group the military thought of those in authority in Soviet Russia around three main points: (1) war as a phenomenon in the evolution of human society; (2) the Red Army as an instrument of class dictatorship and as a weapon of liberation of oppressed races and of the proletariat from capitalist domination; and (3) military science or art, or what is technically known as strategy and tactics. It would therefore seem advantageous to follow the same pattern in tracing the evolution of the Soviet view on these matters.

1. *War as a phenomenon in social evolution*

Strange as it may seem, until very recently there were no systematic authoritative works giving the Marxist viewpoint on war. In Marxist literature one often meets references to the rich heritage of ideas on war bequeathed by the major prophets of Communism—Marx, Engels and Lenin. However, the Great Soviet Encyclopedia, published in 1928, blandly admits that what Engels said, worth knowing, about war is contained in a few pages of the second part of *Anti-Dühring,* and that Marx scattered observations on war in some of his historical works. The subject index to the complete edition of Lenin's works, printed by the Soviet State Publishing Concern, discloses practically the same picture. This naturally leaves a wide field to the lesser fathers of the Soviet church for the wielding of their croziers in the inquisitions held on the heresiarchs and apostates of Marxian socialism.

However, in so far as the basic definition of war as a social phenomenon is concerned, there is no real divergence of opinion between the ardent followers of the party line of today and the anathematized Trotzky. They all agree that good old General von Clausewitz, bourgeois idealist as he was, hit the nail on the head by defining war as a continuation of state policy

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by other means. The Marxist Fathers adopted this dictum of the Prussian militarist and, according to Lenin, have always considered the view expressed by the author of *Vom Kriege* a basis for the study of the significance of any war.[1] This was amplified, in line with the philosophy of historic materialism, to mean that war between states is the continuation of the struggle between their respective ruling classes.[2] "Policy" is of course understood by the Marxists in a sense very different from that of Clausewitz.[3] They define policy as concentrated economics,[4] and also as the struggle between the classes.[5]

There is no sentiment whatsoever in the Soviet attitude toward war. Soviet thinkers are thoroughly hard-bitten in their views on war, as they are on most important practical problems, reserving their sentiment only for the socialist "kingdom come". Some of them think that St. Augustine's definition of war as *magna latrocinia* is somewhat too narrow; they agree with him, however, to the extent of claiming that wars are conducted for material reasons,[6] which constitute, according to Lenin's terminology, "the objective content" of hostilities.[7]

The wars of our days, according to the Communist theory, will be of several kinds: on one hand there will be imperialistic wars, aimed at the acquisition of areas productive of raw materials; on the other hand, the Soviets are firmly convinced that another armed intervention of capitalistic countries in the affairs of the U.S.S.R. is likely to occur. The latter form of war will be interwoven with civil wars. Revolutionary wars will result from the revolutionary situation which will be

[1] Lenin, N., *Sobranie sochinenii* (Moscow, Gosizdat, 1922), vol. XIII, pp. 144, 145.

[2] Rotstein, F., "Voina kak sotsialnoe iavlenie", *Bolshaia Sovetskaia Entsiklopediia* (Moscow, 1928), vol. XII, p. 569.

[3] Bocharov, "K. Clausewitz 'O voine'", *Morskoi Sbornik* (Leningrad), December 1933, p. 125.

[4] *Ibid.*

[5] *Ibid.*, p. 126.

[6] Rotstein, *op. cit.*, pp. 553, 556, 557.

[7] *Ibid.*, p. 556. Also Nizhechek, I., "Politika i voina", *Voina i Revoliutsiia* (Moscow), January–February 1933, p. 38.

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created by the involving of the masses of the people in another armed struggle on a large scale.[8]

The Communists foresee also another category of wars: struggles for freedom on the part of the oppressed peoples of Asia, Africa and elsewhere, where one race is kept in subjection by another.[9] They believe, however, that such wars have a tendency to evolve into revolutionary wars of the proletariat. From the Soviet viewpoint, class feeling and class aspirations of the bourgeoisie of India and China now overshadow national aspirations for independence from foreign oppressors to such an extent that in the future the struggle for national independence of the oppressed races can take place only under the leadership of the proletariat and will assume the character of revolutionary class wars.[10] The divergence between the Chinese Nationalists of Nanking and the Soviet government undoubtedly helped towards the crystallization of that theory.

The Soviet sociologists do not except wars for liberation from their general principle that material reasons are the underlying cause of any war;[11] in other words, that the struggle for political independence is only an expression of aspirations for a greater share in the material resources of the country.

Communists do not agree with the extreme view that wars will continue as long as men live on earth. They are firmly convinced, however, that wars will cease only with the complete downfall of the capitalist system and the final victory of the proletariat. Wars will cease then, because class struggle, the chief reason for wars, will disappear with the formation of a classless society throughout the world.[12] In other words, if you want to see the end of wars, wish for a world revolution and the abolition of private property in means of production.[13]

Neither Marx nor Engels was ever pacifistically inclined in the field of foreign or internal politics.[14] The author of *Das Kapital* foresaw that "*on the event of any complete reconstruc-*

[8] Rotstein, *op. cit.*, pp. 575, 576.

[9] Nizhechek, *op. cit.*, p. 32.

[10] Rotstein, *op. cit.*, p. 573.

[11] *Ibid.*, p. 555.

[12] *Ibid.*, p. 569.

[13] *Ibid.*, p. 576.

[14] Riazanov, D., "Voennoe delo i marksism", in *Voina i voennoe iskusstvo v svete istoricheskogo materializma* (Gosizdat, Moscow, 1927), p. 14.

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tion of society the last word of social science will be: war or death, a death struggle or annihilation. Such is the irrefutable situation." [15] The traditional school of historians, who give a large place to war in their histories, will be surprised to know that in so doing they have the approval of the Soviet philosophers of war.[16] According to the latter, any large war brings with it changes in the economic as well as the social structure of society and becomes a point of departure for a new line of historical development. War, they admit, expedites the unfolding of processes which already were developing under the surface at a much slower rate.[17]

Marx, the founder of modern Communism, called war the midwife helping the birth of a new society from the loins of the old order. Soviet theoreticians think that, under these circumstances, war has a positive useful function to perform in tearing down senile institutions and forms of human relations, which are impeding the development of the living forces of humanity.[18] They believe that war accelerates the growth of the revolutionary forces and advances the advent of the revolution.[19] This view presents a rather striking contrast to the much-repeated dictum that war is often an opiate for internal troubles.

As late as in December of 1932 a magazine published by the Soviet government was frank enough to admit that the chief problem of the Communist Party in its struggle against imperialistic wars consisted first of all in a ruthless war on pacifism of all shades, that is, the League of Nations, the Locarno Pact, disarmament conferences, and the activities of the Second International in the interest of peace.[20]

Lenin thought that socialists could not oppose war in general. He considered that civil wars of the proletariat against the bourgeoisie were inevitable, and he envisaged the possibility of a war waged by a socialist country against bourgeois or re-

[15] *Ibid.*, p. 15.

[16] Rotstein, *op. cit.*, p. 571.

[17] *Ibid.*

[18] *Ibid.*, p. 572.

[19] Nizhechek, *op. cit.*, p. 38.

[20] Leonidov, "Osnovy leninsko-marksistskogo ucheniia", *Morskoi Sbornik*, December 1932, p. 23.

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actionary countries.[21] He stated that there was not a grain of Marxism in a program of disarmament and opposed to this the program of arming the proletariat in order to conquer and to expropriate the bourgeoisie.[22] He maintained that the proletariat cannot disarm until it accomplishes its historical mission, after disarming the bourgeoisie. "We never said", writes Lenin, "that the socialist republic can exist without an armed force."[23]

Lenin rejected disarmament as a specifically nationalistic program of weak states, which has no place in the international program of an international revolutionary party. He did not mince words.[24] The question of pacifism came up at the meeting of the plenum of the executive committee of the Communist International in 1925 and pacifist views were duly condemned.[25] "Peace pacts lay the foundation for wars", commented Lenin irreverently in his paper on imperialism.[26] He also made reference, in another work of his, to dreams about peace and said that without the propaganda of revolutionary activity, such dreams express merely fear and have nothing in common with socialism.[27] This judgment, however, should not be considered as a condemnation of certain measures which may easily be mistaken for pacifism. The proletariat in the capitalistic countries is urged to clamor for the abolition of regular troops, political police, and in the same breath, to agitate for increase in the pay of the soldiers, for the improvement of their living conditions. The latter two aims are set with a view of building up and strengthening class antagonism within the army.[28] All this is of course advocated not in the interest of preventing wars, but to facilitate the advent of the proletarian revolution.

[21] Lenin, *op. cit.*, vol. XIII, pp. 449, 450.

[22] *Ibid.*, p. 450.

[23] *Ibid.*, vol. XVI, p. 138.

[24] *Ibid.*, vol. XIII, p. 458.

[25] Tukhachevskii, M. P., "K voprosu o sovremennoi strategii", in *Voina i voennoe delo v svete istoricheskogo materializma* (Gosizdat, Moscow, 1927), p. 111.

[26] Lenin, *op. cit.*, vol. XIII, p. 329.

[27] Leonidov, *op. cit.*, p. 11.

[28] *Ibid.*, p. 23.

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It is only fair to say here that while the Communists are not at all pacifist in principle and admit that revolutionary wars and wars for national liberation should be regarded as desirable phenomena and not an evil at all,[29] they do not make any attempt to idealize war nor are they unaware that war acts as a negative selective process, weeding out the best elements of a nation.[30]

Their viewpoint is very aptly expressed by one of the younger generation of the Russian Communists, a pioneer in the study of war from the sociological angle, B. I. Gorev: "A knife is an instrument of crime in the hands of a robber and a tool of healing and liberation in the hands of a surgeon." [31]

This statement raises of course the question as to who is a "robber" and who a "surgeon" in so far as wars are concerned. Lenin gives a very definite answer to that query. He says that if the real meaning of the war consists in the overthrowing of a foreign domination, this war should be considered a "progressive" war in so far as the oppressed nationality is concerned.[32] In case of a war between Morocco and France, India and Great Britain etc., Morocco and India would have "justice" on their side, and the wars could be considered "defensive" in the case of these countries, entirely regardless of who was the first aggressor.[33] On the other hand, wars between imperialistic nations, whatever the excuse for hostilities, are always robber wars. The present actual head of the Soviet Army, M. P. Tukhachevskii, amplifies this thought by saying that a war of the proletarian Soviet state against an imperialistic state would be a "just" and "defensive" war.[34]

Thus the problem is solved in a very simple and, from the Communist viewpoint, a quite logical way. The capitalistic countries will always be in the wrong—should they be attacked by the "oppressed" nations or should Soviet Russia declare

[29] Gorev, B. I., "Voina kak sotsialnoe iavlenie", in *Voina i voennoe delo v svete istoricheskogo materializma* (Gosizdat, Moscow, 1927), p. 31.

[30] *Ibid.*

[31] *Ibid.*, p. 32.

[32] Lenin, *op. cit.*, vol. XIII, p. 344.

[33] *Ibid.*, p. 94.

[34] Tukhachevskii, *op. cit.*, p. 123.

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war on them; justice will be on the side of the attackers and not of the attacked.

It would be out of place here to go into a detailed criticism of the socio-philosophical theory of war evolved by the Soviets. This would mean a thorough discussion of the Marxian understanding of history. Suffice it to say that it is quite obvious that their interpretation is not all-embracing and universal, as they pretend.

One could sum up the Soviet theory of war as follows: a great war between Western nations would expedite the latent social processes and would hasten the unavoidable world revolution and the consequent establishment of the dictatorship of the proletariat on a world scale. As all wars between capitalistic states are " robber " wars according to the Marxian-Leninist theory, it does not matter who is the aggressor or who the victim of the aggression. All that interests the Soviet thinkers is the question of the evolution of such a war between capitalist countries into civil wars or into wars of liberation of the oppressed colonial races against their imperialistic oppressors.[35] They recommend that the Communists in their revolutionary work should use every effort to change imperialistic wars into civil wars, that they should develop the persistent policy of a single front of the proletarian masses.[36] The discrepancy between the theory and the present practice of the Soviets as to the maintenance of international peace is quite obvious. There are several good reasons for it. We shall bring up some of them upon examining the Communist views on the art of war.

2. *The Red Army*

In 1917 Lenin made a very remarkable prediction, namely, that the only way to guarantee Russia against a return of monarchy was to replace the old organs of oppression, such as police, the regular army and the bureaucracy, by a general

[35] Golubev, A., " O nekotorykh voprosakh voiny i voennogo iskusstva v svete marksisma-leninisma ", *Voina i Revoliutsiia*, vol. V (1931), p. 100. Leonidov, *op. cit.*, p. 24.

[36] Golubev, *op. cit.*, p. 100.

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arming of the people—not of the proletariat only;[37] adding that this would permit a movement toward socialism, not by the introduction of socialistic measures from above, but by initiating the masses of the proletariat and near-proletariat into the art of ruling and the disposition of the full power of the state. This glorious pipe-dream probably is equalled only by the other famous prediction made by Lenin in 1907, namely, that the Russian Revolution must necessarily be bourgeois and not proletarian.[38]

The Decree of the Soviet of the People's Commissars of January 12, 1918, bearing on the establishment of the Red Army, still has some faint traces of Lenin's pronouncement of 1917.[39] A pious hope is expressed that the new army, founded to support the power of the Soviet government, will be replaced *within the very near future* by the arming of the entire people. Mention is also made in that decree of the idea that the Red Army will serve as a help to the coming socialist revolution in Europe.

A. Geronimus, one of the leading contemporary Soviet theorists of war, draws a picture of the Red Army very different from Lenin's dreams of 1917. The Red Army is a centralized fighting force, embracing the fighting resources of all the republics making up the Soviet Union. The Communist Party, through the political organs of the Red Army, is the main directing and controlling force in it.[40] The Red Army is called, therefore, the army of the proletarian dictatorship and differs from the military organizations of the capitalistic countries by the fact that it has an openly class character and consists of members of the proletariat and of the toiling masses.[41] As its late chief, Frunze, put it, the Red Army is destined in the near

[37] Frunze, M. V., *Sobranie sochinenii* (Gosizdat, Moscow, 1926), vol. III, p. 30.

[38] Lenin, *op. cit.*, vol. III, p. 12.

[39] Decree of the Soviet of the People's Commissars, January 12, 1918, quoted in Trotzky, L., *Kak vooruzhalas' revoliutsiia* (Moscow, 1924), vol. III, p. 220.

[40] Geronimus, A., "Sushchnost' krasnoi armii kak armii diktatury proletariata", *Voina i Revoliutsiia*, vol. II (1931), p. 27.

[41] Bocharov, "Sposoby vedeniia voiny", *Voina i Revoliutsiia*, January-February 1933, p. 52.

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future to assist the coming socialist revolution in Europe.[42] The present head of the Soviet armed forces, M. Tukhachevskii, claims that the Red Army is trained in the ideals of internationalism as an instrument of the proletarian dictatorship. He believes that this particular feature will be of great assistance to the army, as it will make for numerous allies on the other side of the front among the proletarians in the enemy's country.[43] He is convinced that for the Red Army to encompass by its influence parts of the territory of a capitalistic country occupied by U.S.S.R. and to organize there the dictatorship of the proletariat, will be much easier than for an imperialistic army of the capitalists to re-establish the dictatorship of the bourgeoisie on the territory of Soviet Russia.[44] He claims that the political work of the Russian Communist Party within the Red Army makes of it a powerful factor in the establishment of the international solidarity of the proletariat.[45] The military section of the Russian Communist Party program confirms this view in stating that the military training and education of the Red Army is conducted on the basis of class solidarity and socialist enlightenment.[46] An important means of maintaining and intensifying the hold of the proletariat on the Red Army lies in the close relation maintained between the factories and the organizations of the poorer peasantry and the military units of the Soviets.[47]

According to Geronimus, the Red Army is the army of the proletarian revolution and is by that token the army of the international proletariat, in its struggle for the complete victory of Communism the world over.[48] He says that the Red Army is the most important organ of the dictatorship of the proletariat, and that it will help to develop and carry to final victory the proletarian revolution in all other countries, to establish the domination of Communism throughout the world.[49] He frankly

[42] Frunze, *op. cit.*, vol. III, p. 328.

[43] Tukhachevskii, M. P., "Voina kak problema vooruzhennoi bor'by", *Bolshaia Sovetskaia Entsiklopediia* (Moscow, 1928), vol. XII, p. 596.

[44] *Ibid.*, p. 597.

[45] *Ibid.*

[46] Geronimus, *op. cit.*, pp. 22, 23.

[47] *Ibid.*, p. 23.

[48] *Ibid.*, p. 12.

[49] *Ibid.*, p. 13.

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admits that the Red Army is the tool of one class only—the proletariat—and is an instrument of class struggle. The obvious contradiction between theory and fact does not escape him—he sees that the Red Army has a national character. However, Lenin, later in the day, provided a very plausible solution for that vexatious question by maintaining that the proletariat is assuming power, not in order to establish its domination, but in order to lead the entire people toward socialism, to direct all toilers and exploited in the work of organization of social life without the bourgeoisie and against the bourgeoisie.[50] This explanation is definitely inconsistent with his prophecies of 1917 but enables a contemporary Communist writer to find comfort in Lenin's authority.

Soviet thinkers believe that workers and peasants are convinced that the Red Army does not apply and will not apply its forces in predatory wars, nor for the achievement of new conquests, but only to secure for the masses opportunities for peaceful, productive work and complete reconstruction of their life on the new socialistic basis.[51] The incident of the armed attack on Chinese in Manchuria a few years ago is conveniently overlooked.

There is another important function ascribed to the Red Army—it is considered a powerful fulcrum in bringing over to the side of the proletariat all toilers and exploited. The Red Army is viewed as a school of socialism strengthening the ties between the industrial workers and the peasantry. It is accordingly recruited not only from the proletariat, but also from peasants who do not employ any hired labor. It may be considered therefore, from an optimistic viewpoint, as a product of a political and military union of the workers and the poorer peasants.[52]

Stalin, in his report to the XVIth Congress of the Russian Communist Party, epitomized the Soviet view of the Red Army, by calling it the army of liberation of the toilers, the army of liberation of the oppressed peoples, as well as of the defense of the freedom and independence of the U.S.S.R. He ex-

[50] *Ibid.*, p. 14.
[51] *Ibid.*, p. 16.
[52] *Ibid.*, p. 18.

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pressed his conviction that at the critical moment the Red Army will find the greatest possible support among the millions populating the Soviet republics.[53]

To sum up—the Red Army is a highly centralized military machine controlled by the Communist Party of Russia and intended to maintain the dictatorship of the proletariat—i. e., of the party at home, to defend the country from attacks on the part of capitalistic states, and, under favorable circumstances, to serve for armed intervention in other countries to help the proletarian revolutions there.

It may be opportune in closing this discussion of the Red Army to draw attention to the remarks of the co-founder of Marxism, Engels, in his well-known *Anti-Dühring,* where he ridicules Dühring, calling him a brave Prussian "carrying his Fatherland in his breast", on account of his statement that in the Communist state there would be a regular army, police and gendarmes.[54]

It may be objected that Engels was speaking of a fully developed Communist state and not of one going through various intermediary stages, as is true of the U.S.S.R. However, the contemporary Communist writers in Soviet Russia do not hesitate to draw support for their views on military subjects from the same work of Engels, applying these views to the present conditions in Soviet Russia and not to a distant future. Lenin's pronouncement of 1917 also seems to indicate that he had in mind *Anti-Dühring* when uttering his prophecy about the disappearance of the regular army and police in Russia.

3. *Soviet views on military science or art*

Here we are confronted with three distinct phases of evolution. They may be briefly, if somewhat inaccurately, summarized as the epoch of the Founding Fathers, the transitional period, and the current period of Marxian military scholasticism.

[53] Stenographic report of the transactions of the XVIth Congress of the Russian Communist Party. Comrade Stalin's report, p. 23. Quoted in Nizhechek, I., "Politika i voina", *Voina i Revoliutsiia,* January-February 1933.

[54] Engels, F., *Filosofiia, politicheskaia ekonomiia, sotsializm (Anti-Dühring),* Russian translation, published by the Petrograd Soviet of the Workers and Redarmists' Delegates (Petrograd, 1918), p. 281.

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Curiously enough, present-day Communist dogmatism in military questions has found a queer bedfellow in the Prussian General Karl von Clausewitz, whose works are much read by the more intellectually inclined officers of the Red Army and whose rather remarkable common sense serves to a certain extent as a counterbalance to the abstract rationalizations of the Soviet military doctrinaires, trained at the Communist Academy of Moscow. The Soviet government not only printed in Russian translation a new edition of Clausewitz' great book *Vom Kriege*, but published in a separate pamphlet Lenin's annotations on that work.[55]

(a) *The views of the Founding Fathers*

On matters of Communist military strategy and tactics Karl Marx maintained an almost complete silence. The compendium of the views of Marxian thinkers on war and the art of war, published by the Soviet State Publishing Concern in 1927, quotes only a few lines from a little-known letter of Marx to Engels to the effect that the theory of means of production predicating the organization of labor is brilliantly confirmed by the experience of the "manslaughter industry", as Marx, with somewhat ponderous humor, refers to war.[56] He considered that the development of forces of production and of relations of production postulates the development and the conditions of military art. The paucity of utterances by Marx on the art of war led certain contemporary Marxian writers to take the stand that Marx considered that the art of rebellion and the art of war are practically identical in their fundamentals. It is hardly necessary to discuss this view, since its fallacy is obvious.

Engels, on the other hand, left behind remarkably trenchant observations on military art. His incisive discussions of military subjects show that he fully deserved his nickname "The General". In his paper on the possibility of an attack on France by the powers of the Holy Alliance in 1852, he exam-

[55] Lenin, V.I., *Zamechaniia na knigu Klauzevitsa "O voine i vedenii voiny"* (Partizdat, Moscow, 1933).

[56] Quoted in *Voina i voennoe iskusstvo v svete istoricheskogo materializma* (Gosizdat, Moscow, 1927), p. 173.

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ined the armed forces of revolutionary France from the viewpoint of the classes from which they would have to be recruited and came to the conclusion that as long as the chief elements in these forces were the peasantry and the scum of the cities (the "*Lumpen-proletariat*"), the revolutionary government would have to use the means and methods of the contemporary bourgeois military art.[57] Those who hoped to evolve new military combinations and revolutionary methods of destroying the enemy's forces he called adepts at abstract theorizing. Engels believed that the revolution would have to fight, using contemporary military means, as well as contemporary bourgeois military art. He maintained that the victory would be on the side of numbers—Napoleon's "*gros bataillons*".[58] Engels arrived at this conclusion after a very thorough study of the wars of the French Revolution. He saw clearly through the heroic myth of the victories of the armies of the Convention. He even went so far as to say that one can justify and understand the feelings of Bonaparte toward the "despicable" fourteen armies of the Convention.[59] He thought that the Convention was saved solely by the lack of cohesion of the Coalition and that the famous mass tactics of the French revolutionary armies were first perfected by Bonaparte in 1796.[60] The original inventors of mass tactics, he believed, were the Russians under Suvorov.[61] On the lips of any lesser writer than the collaborator of Karl Marx, such words would sound like rank heresy and treason to the revolutionary cause.

It is true that Engels taught that the emancipation of the proletariat would find its expression in military art and create new forms of warfare. He gave warning, however, that the first attempts at new methods of warfare by a proletarian state would be far from the ultimate military art of the emancipated proletariat.[62] In other words, he saw clearly that it would take time and experience to introduce into the bourgeois methods of warfare any serious changes that would be of value to the proletarian state. Military art, Engels wrote, must be

[57] *Ibid.*, p. 159.
[58] *Ibid.*, p. 160.
[59] *Ibid.*, p. 145.
[60] *Ibid.*, p. 148.
[61] *Ibid.*, p. 151.
[62] *Ibid.*, pp. 156, 157.

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the logical development of the new social relations, as in the case of the French Revolution and Napoleon. He was obviously not in favor of producing the chickens of military theory from an ideological incubator.

Engels maintained that every new development in the art of war must be predicated on the impact of new forces of production.[63] It would be futile to call to arms the entire population until national industry had reached a high level, and class distinction within the society had completely disappeared. He remarked very aptly that a well-developed network of railways was absolutely necessary to make possible the successful employment of the revolutionary mass armies.[64]

He made, however, a remarkable blunder, which was shared by many thinkers of the nineteenth century, in his prediction that wars would tend to be shorter than in the days of Napoleon, on account of the heavier expense necessitated by modern technique.[65] He made another very surprising mistake for such a penetrating thinker, in believing that there was not likely to be any progress in the development of weapons of warfare that could have a serious influence on methods of war. He says: "In this direction the era of development is in the main closed."[66]

In short Engels believed that the organization of the armies, their methods of operation, their victory or defeat are dependent on material economic factors which include the human material and the armament, in other words on the quantity as well as the quality of the population and the state of technological development reached by the country.[67] Generally speaking, this is not very different from the accepted view in at least some of the capitalistic countries. In the opinion of Engels, the great generals who created new epochs in military history were either responsible themselves for finding new material means of warfare, or gave a new application to the material means already in use.[68] While he does not admit the

[63] *Ibid.*, p. 157.
[64] *Ibid.*, p. 158.
[65] *Ibid.*, p. 159.
[66] *Ibid.*, p. 141.
[67] *Ibid.*, p. 142.
[68] Engels, F., *op. cit.*, p. 154.

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irrational adulation of military talent, he leaves to a general of genius a very respectable place in his scheme of things.

Lenin did not add very much to the heritage left by Engels in the field of thought on military art. He agreed with Clausewitz that politics should be continued during war,[69] in the sense that policy should shape the course of war. He repeated Engels' thesis that military tactics are dependent on the level of the military technical equipment,[70] that with a change in the military *matériel* the methods of warfare will change accordingly.[71] Lenin thought that the Japanese won their victory over the Russians partly on account of their superior knowledge of the use of explosives.[72] He stated that in modern times the connection between the economic and cultural structure of a country and its military organization is more strongly pronounced than ever.[73]

In the first years following the November Revolution of 1917 Trotzky was unquestionably considered one of the Founding Fathers of the Soviet state. His portraits flanked Lenin's in government offices, public buildings, schools and the peasants' *izbas*. At that time the man at the bench and the man with the rifle regarded them as titanic twins, revolutionary Dioscuri, the two faces of the revolutionary spirit.

Matters are very different today, and the former War Commissar does not share honors in the Soviet Pantheon with the saints of the Communist church.[74] During the Civil War in Russia Leon Trotzky had a great deal to do with the shaping of the Communist Party's theories on warfare. When Trotzky's flaming meteor disappeared from the Soviet firmament and Stalin was firmly entrenched in the Kremlin, it became cus-

[69] Lenin, N., *Sobranie sochinenii* (Moscow, Gosizdat, 1922), vol. XIII, p. 388.

[70] *Ibid.*, vol. XX, p. 214.

[71] *Ibid.*

[72] *Ibid.*

[73] *Ibid.*, vol. VI, p. 38.

[74] Nizhechek, *op. cit.*, p. 35. "Lenin's teachings on war and their further development by comrade Stalin were made in their entirety the corner stone of the decisions of the VIth Congress of the Communist International, of the XIth and the XIIth plenary meetings of the Executive Committee of the Communist International on questions of war, which gave an all-embracing doctrine of war and its concrete application to the conditions of the contemporary period."

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tomary in Soviet military circles not only to minimize Trotzky's work in the military field, but also to accuse him of various heresies against the patristic literature of Communism on war and warfare.

Immediately after the end of the Civil War in Russia, the young Communist leaders of the Soviet military forces made a very earnest effort to develop a new doctrine for the Red Army, deriving their material from their experience during the war of manoeuvre in the vast Russian plains where most of the Civil War actions were fought. This attempt to create a special new theory of warfare for the Red Army met with strong opposition on the part of Trotzky.

He pointed out that the strategy and the tactics of the war of manoeuvre were used by both sides during the Civil War and that therefore there was no foundation for the claim that mobility and manoeuvre strategy are specific expressions of the revolutionary character of the Red Army.[75] He argued that while the operations of the Red Army in Asia were likely to be very pronouncedly of a manoeuvre type, operations on the Western front would call for much less mobility and manoeuvring. He warned against the development of a military doctrine on the basis of the limited experience of the Civil War.[76] One can easily see how this stand of his made him unpopular among the ardent young generals of the Red Army, many of whom thought themselves equal to Napoleon in their knowledge of military art, after the crushing defeats they inflicted on the armies of the White generals.

The young leaders of the Red Army were anxious to establish that the offensive principle is the essential characteristic of revolutionary strategy.[77] Trotzky accused them of an attempt to ossify the Soviet military art. He claimed that the Red Army should pay the greatest possible attention to the safeguarding of elasticity and denied that the offensive principle is the soul of the war of manoeuvre, claiming that the spirit of activity and of initiative is the core of it.[78]

[75] Trotzky, L., *Kak vooruzhalas' revoliutsiia* (Moscow, 1924), vol. II, p. 229.
[76] *Ibid.*, p. 230.
[77] *Ibid.*
[78] *Ibid.*, pp. 233, 236.

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Trotzky suspected his opponents of poor knowledge of the army regulations and counselled them first to master the primers of military art before attempting any creative work in the military field.[79] He thought that it would be very harmful to inculcate in the young officers of the Red Army the idea that the old military doctrine had no merit.[80] He called on the leaders of the Red Army to revise the regulations, not in the light of sensational new doctrine, but with an eye on the totality of military experience, improvement of the existing organization, attention to details.[81] He pointed out that attempts to exalt into a doctrine the experience of the last war were characteristic of mediocre generals and that military history was full of such attempts by military leaders lacking in originality.[82] He did not close the door to the development of a specific Soviet military doctrine in the future. But he insisted that this should come about only after developing the technological and economic basis of the army.[83]

Trotzky met squarely the attempts to construct a new theory of revolutionary warfare on the basis of Marxism. He denied that Marxism was a universal method for all science and art, and remarked that some of the attempts to extend it into the field of military art might be caused by disinclination on the part of some Marxists to study an entirely new subject and their eagerness to have a ready master key to any problem.[84] At the XIth Congress of the Russian Communist Party he ridiculed attempts to apply Marxism to the art of war: "How can one develop war practice on the basis of Marxian method? This would be similar to the evolving on Marxian lines of a theory of architecture or a veterinary text-book." Trotzky thought that war art did not belong in the field of natural science. It was not a science. Accordingly there was no basis for attempts to reconstruct the art of war on a Marxian foundation.[85] Trotzky called such attempts "mistakes of young and immature Marxian thought in the field of military theory."[86]

[79] *Ibid.*, p. 208.
[80] *Ibid.*
[81] *Ibid.*, p. 239.
[82] *Ibid.*, p. 223.
[83] *Ibid.*, p. 209.
[84] *Ibid.*, p. 276.
[85] *Ibid.*, p. 273.
[86] *Ibid.*, p. 276.

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It is easy to discern a great deal of similarity between the views of Trotzky and those of Engels. However, his ideas did not survive his political downfall.

(b) *The transitional period*

One of the main reasons for outlining the views held by Soviet leaders in the intermediary period (following Trotzky's clear-cut opposition to the introduction of the Marxian method into the military art, and preceding the similarly well-defined era of Marxian theorizing) is that Marshal Tukhachevskii, the real technical head of the Red Army today, took a very prominent part in the attempts to formulate at that time a revolutionary military doctrine.

As early as 1921, a group of the leaders of the Red Army of the Ukraine, headed by Frunze and Gusev, drew up an outline of what they believed to be a new conception of the science of warfare. Their theses were discussed by the military section of the XIth Congress of the Russian Communist Party in 1922, where they encountered powerful opposition on the part of Trotzky. The general tendency of the program presented by the group was to permeate with Marxism the training of the army, to evolve a system of strategy and tactics based on Marxism.[87] The authors of the theses took it for granted that the conflict between capitalistic states and Soviet Russia was inevitable and proposed to train the Red Army politically for the struggle with "World Capitalism".[88] Trotzky objected that while the Communist program reserved the right to take the initiative in attacking the class enemy, it was impossible to educate the army, largely composed of peasants, on any other platform than the defense of the country.[89] He particularly objected to the contention that the Red Army should be trained for coöperation with toilers in other countries in their struggle for power. As Trotzky stated, "with such tactics we shall not be able to capture the peasant's soul."[90]

It was also proposed by these pioneers of Marxian military science that the offensive principle should be accepted as a basic

[87] *Ibid.*, pp. 242, 243.
[88] *Ibid.*, p. 244.
[89] *Ibid.*, pp. 246, 247.
[90] *Ibid.*, p. 247.

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military dogma of the Red Army. This was considered by them particularly important, since they anticipated that the future revolutionary wars would be of the same type as the Russian Civil War, i. e., that manoeuvre would be very much in the foreground and that there would be practically no war of position.[91]

In criticizing the part of the theses dealing with strategy and tactics, Trotzky remarked sarcastically, and with a great deal of truth, that the new revolutionary dogma reminded him very much of the famous " Science of Victory " of the great Russian general Suvorov, who lived in the eighteenth century.

Frunze was not deterred by the biting criticism offered by Trotzky and continued to give his approval and encouragement to the development of a new military dogma. As he came to occupy the leading post of Commissar of War, his influence kept the controversy alive and spurred on the zeal of the partisans of Marxian military theories. In 1925 Frunze restated his faith in the soundness of the views of the military thinkers basing their ideas of future wars on the experience of the Russian Civil War.[92] He thought at that time that aeroplanes and the chemical forms of war would not be decisive in the next great armed struggle between the European states; the same arms that dominated the field of battle in the past would play a like rôle in the future. According to Frunze, victory in the next war would be carried by the infantry.[93] In this respect Frunze took the same surprisingly conservative stand as Engels had taken years before. Perhaps the fact that Russian industry was in a very miserable state and that even the First Five Year Plan was not started, influenced his views. After all, in 1925 the Russian Army was really powerful only in its infantry and, perhaps, its cavalry.

The partisans of the new doctrine did not succeed as yet in ousting the followers of the conventional school of military thought.

[91] *Ibid.*, p. 251.

[92] Frunze, *op. cit.*, vol. III, p. 249.

[93] Frunze, M. V., *Ocherednye voprosy voennogo dela* (Moscow, 1925).

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Even as late as in 1927, in a compendium on war and military art, the well-known Marxist Riazanov maintained that Soviet Russia should adopt and pursue a defensive strategy in accordance with its strictly defensive policy. He admitted that among the chiefs of the Red Army there were some who dreamed of nothing else but the conquest and destruction of the entire capitalistic world and did not recognize any other strategy but that of offense carried to the extreme. For his part, he did not exclude offensive operations altogether, but he stoutly maintained the defensive principle as the basis of the Red Army strategy.[94] It would be naïve, he declared, to think that it was possible to develop a special proletarian military doctrine, as opposed to the bourgeois theories of war. That would be a "Utopia".[95] Riazanov's position is different to some extent from that of Trotzky in that he asserts the importance of using the Marxian method when studying the various sciences on which military art is founded, such as military history, economics and political science. The organization, the equipment and the recruiting of the armed forces must therefore come under the influence of the Marxian theory.[96] Trotzky would hardly deny this altogether, nor would he admit it to the extent allowed by Riazanov at the time of his controversy with Frunze.

The present Vice-Commissar of War, M. Tukhachevskii, was foremost among the younger military leaders who advocated the adoption of a Marxian military doctrine in the years immediately following the Civil War. He maintained at that time that trench warfare would never be of any importance again and advocated the adoption of the defensive principle as a leading principle of faith for the Red Army. Trotzky, in opposing him, remarked that reckless offensives were characteristic of Tukhachevskii, hinting apparently at the disastrous experience of the Polish War.[97]

M. Tukhachevskii expounded his views on warfare in a very interesting article in the Great Soviet Encyclopedia, published

[94] Riazanov, *op. cit.*, pp. 20, 21.

[95] *Ibid.*, p. 20.

[96] *Ibid.*

[97] Trotzky, *op. cit.*, pp. 205, 236, 268.

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in 1928. He considered that the conduct of war under present circumstances ceased to be the concern of the general commanding the army and became a problem for the entire government of the country.[98] He emphasized the growing importance of loss or gain of territory in the conduct of war, pointing out that occupation of land belonging to the enemy may seriously alter the relative strength of the forces and make possible the expansion of the aims of the war. This apparently is logically connected with another assertion of Tukhachevskii's, that the present mass training of the nations in the rudiments of war contains in itself the fatal germ which will destroy the capitalist state, when the bayonets of the toilers will turn against the "exploiters".[99] In other words, Tukhachevskii hoped that the Soviet Army, upon occupying an important part of enemy territory, would be able to recruit into its ranks the proletarian class of the nation attacked by it.

Tukhachevskii sounded a new note in Soviet writings on war in stating that the plan of war should find support in international treaties and agreements, which would make possible the concentration against the enemy of the largest possible force, or, at least, facilitate the complete isolation of the enemy. Diplomacy should obtain guarantees for the maintenance of economic relations with other countries during the war, and prevent an economic blockade.[100] In other words, Tukhachevskii proposed to use the forces of some capitalistic states against others and also, in case of a war of the U.S.S.R. with a capitalistic country, to establish channels for the importation of war material from other capitalistic countries.

The size of the armed forces as well as their structure and equipment must correspond to the level of the productive forces and be at least strong enough to be able to solve the problems posed for the first period of the war. The demands of war should be taken into consideration in the plan of construction and location of industrial plants producing material needed by the army. The plan of war includes the development of a

[98] Tukhachevskii, *op. cit.*, p. 577. [99] *Ibid.*

[100] *Ibid.*, p. 578.

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suitable system of transportation on land, as well as the construction of a series of special airfields.[101]

These ideas, as is known, were reflected in the first and second Five Year Plans. Tukhachevskii elaborated his old views on trench warfare by saying that in 1914-1915 the armies had to revert to trench warfare because of the exhaustion of supplies of ammunition for the artillery. He admits now the possibility of a long trench war in the future, as he considers that the growth in the power of infantry armament, particularly of the machine guns, is more rapid than the progress in the means of offense, such as tanks. However, in thus abandoning one of his old fetiches, the principle of manoeuvre, Tukhachevskii firmly holds to the other—the offensive principle. He says that to deny the possibility of achieving the aims set to war by policy through the defeat of the enemy's army is tantamount to the denial of the use of force. He considers that a military defeat of a capitalistic state will accelerate the revolutionary movement latent in it and will advance the hour of the final defeat. Then the proletarian state will be able to make a real lasting peace with the new revolutionary government which will emerge from the ruins. But even with respect to the offensive, Tukhachevskii is not as adamant as he was upon the close of the Civil War in Russia. He admits that on account of the complicated political situation, on account of geographical peculiarities of location of industrial centers and for many other reasons, it is impossible to determine the forms of warfare in all instances once for all. He says that the strongest form of war is the one which answers best to the political aims of the war and ensures the security of its economic basis. He thinks that the next war will be even of a greater intensity and on a larger scale than the World War. He believes that the development of the new weapons of air and of chemical warfare calls for depth in the theatres of war, as well as depth in the disposition of the troops in action. Tukhachevskii claims that the Soviet Communist dictatorship has great advantages, as against parliamentary systems, in the conduct of these intensive wars of the future accompanied by an acute class struggle.[102]

[101] *Ibid.*, p. 579.

[102] *Ibid.*, pp. 584, 585, 590, 597.

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Apparently in 1928 it was not clear as yet to the Soviet military leaders that parliamentarianism in Germany would cease to exist within a few years.

There is a great deal of the old spirit in the statement that war consists of a series of consecutive operations, leading to the complete and crushing defeat of the armed forces of the enemy, as well as to the capture of the sources of his economic war base. These offensive operations may be interrupted by intervals of trench warfare, marking off one period of the war from the other.[103]

On the whole Tukhachevskii, in giving lip service to the flexibility of forms of future war, still has his heart set on a crushing offensive and does not expect to obtain the best results by a war of attrition. He considers that if the war cannot be finished quickly, the first period of it should consist in offensive operations, putting the Red Army in such a position that the prolongation of the war would favor Russian victory. In his opinion, only when this is obtained can the attacking army change from crushing assaults to the strategy of attrition.[104] He admits an exception in the case when the lines of communication of the opposing side are cut at the start of the war—in such a case the strategy of attrition can be used from the inception of hostilities.

Tukhachevskii makes a very interesting attempt to safeguard the army from political interference during the development of its military operations. He argues that a military operation should be subordinated to the general political aims of the war, and not to current political interests.[105] In the same breath, however, he attacks Ludendorff and the French and Russian generals of the World War for neglecting to coördinate the planning of their military operations with the social life of their respective countries.[106] Social and economic questions,

[103] *Ibid.*, p. 597.

[104] Tukhachevskii, M. P., "K voprosu o sovremennoi strategii", in *Voina i voennoe delo v svete istoricheskogo materializma* (Gosizdat, Moscow, 1927), p. 133.

[105] *Ibid.*, p. 124.

[106] *Ibid.*, p. 116.

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he asserts, must be taken as the basis for strategical calculations.[107]

(c) *Marxian military scholasticism*

The complete victory of Stalin in the long and bitter struggle within the Communist Party of Russia had among its results a definite acceptance of the Marxian theory of warfare by the Red Army. In 1929 was founded the military section of the Communist Academy of the Central Committee of the Communist Party of Russia. This institution holds, with respect to the study of Marxism, the same supreme position as that occupied by the Academy of Science of the U.S.S.R. with regard to the development of science in general. Members of the Communist Academy attacked the exponents of the more conventional viewpoint, including the brilliant professor of the Military Staff College, Svechin, and the former general of the Tsar's army, Verkhovskii, who had devoted themselves to the upbuilding of the Red Army from its inception, and declared them bourgeois theoreticians. Some of the older Marxist thinkers on war questions were also anathematized as rank heretics.[108]

The Central Committee of the Communist Party in 1931 instructed the military section of the Communist Academy to give its particular attention to the theory of warfare. These instructions called for "the attention and the endeavor of the scientific workers to be concentrated on the theoretical development of the problem of socialist reconstruction and of the class struggle of the proletariat". As far as the military section was concerned, the problem was outlined as the repudiation of bourgeois, mechanistic and idealistic views of military history and the formulation of theoretical conceptions of problems in the field of military strategy and tactics.

In addition to the already existent Leningrad section of the Communist Academy, five additional sections devoted to mili-

[107] *Ibid.*, pp. 117, 124.

[108] Geronimus, A., "Na peredovykh pozitsiiakh voenno-nauchnogo fronta", *Voina i Revolutsiia*, vol. V (1931), p. 77.

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tary problems were opened, at Kharkov, Kiev, Minsk, Tashkent and Yaroslavl.[109]

It is worthy of notice that the theoretical work in connection with the development of the Marxian science of war is centered not in the Staff College of the Red Army, but in the Communist Academy. The emphasis is placed, therefore, not on actual military experience and knowledge of the practice of war, but on thorough training in Marxian dialectics and in the writings of Soviet theoreticians. On the other hand it is interesting to observe that six sections of the Communist Academy are involved in the study and elaboration of the new Communist "Science of Victory". The research work is carried on by a large number of students. Some of these modern thinkers are, quite naturally, better versed in the patristic literature of Marxism than in military and naval history. Some of their writings show that their knowledge of the facts of military history is very superficial.[110]

One of the ardent exponents of the simon-pure Marxian viewpoint in military matters summed up the aims of this group as follows: the bourgeois and reactionary military theories should be extirpated, encouragement given to the study of the experience of the Russian Civil War, the Leninist theory of the rebellion, and the military experience of the Communist Party, which, according to the author, is unequalled in the course of all history. The development of a military theory based on the Marxian-Leninist methodology, in accord with the general line of the Communist Party, should be the final aim of the work in the military field.[111]

Another member of that group, Bocharov, joins issue with Tukhachevskii in quoting Engels to the effect that diplomacy is higher than strategy and dictates the movement of troops. In supporting his claim that the social composition of the army is reflected in the methods of conduct of war and combat, Bo-

[109] *Ibid.*, pp. 77, 78.

[110] Compare some parts of Bocharov's "Sposoby vedeniia voiny", *Voina i Revoliutsiia*, May–June 1933.

[111] Krupskii, M., "Za chistotu marksistsko-leninskoi teorii v voenno-morskikh voprosakh", *Morskoi Sbornik*, January 1932, pp. 18, 19.

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charov blunders into stating that mediaeval knights considered it beneath their dignity to fight on foot.[112] Apparently he never heard of Crécy and Agincourt. He also believes that the Red Army is the only one in the world which has staked its combat efficiency on the political consciousness of the fighters.[113]

L. S. Amiragov, another member of the same group, maintains that the outstanding trait of Leninist military art is the doctrine of offense aiming at the complete overthrow of the enemy forces. He further observes that as long as Leninism is opposed to capitalism in general, it is by the same token irreconcilable with the military art defending capitalism.[114] Such things were written as late as the beginning of 1934. The coördination of the military plans of the U.S.S.R. with those of a capitalistic country, France for instance, would be a very delicate operation, should one accept Amiragov's views as typical for those of the governing group in Soviet Russia.

As late as 1933, an eminent member of the group, Bocharov, declared that capitalistic countries would find it extremely difficult to use their troops against the U.S.S.R., because the soldiers would desert from the bourgeois armies and turn the imperialistic war into a civil war.[115] He came to the conclusion that the development of the art of war cannot be regarded as the logical result of past experience, combined with the findings of a purely military theory. However, he did not go as far as some other members of his group in denying the value of the theoretical and practical heritage from the old military art.[116]

It would be extremely interesting to ascertain what real influence on the plans of the Red Army all these newfangled theories are having. Recent events seem to indicate that most of this is merely verbiage, which does not seem to influence the general trend of the politico-strategical thought of the leaders of the Red Army. As stated already, Tukhachevskii today is much more circumspect in his assertions, while Zinoviev's plan

[112] Bocharov, *op. cit.*, p. 63. [113] *Ibid.*, p. 62.

[114] Amiragov, L. S., "K voenno-tekhnicheskomu nasledstvu Marksa, Engelsa i Lenina", *Voina i Revoliutsiia*, January–February 1934, pp. 64, 67.

[115] Bocharov, *op. cit.*, pp. 54 *et seq.* [116] *Ibid.*, p. 57.

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of military understandings with capitalistic countries is being freely adapted by Stalin and executed by Litvinov.

There is good reason to believe that the heads of the Soviet armed forces still hold the opinion expressed by S. Budkevitch in the Great Soviet Encyclopedia, that the future war will probably have the same traits as those which characterized the last one in its last phase. This means that the armies will be very numerous, the entire population will be mobilized or drawn into war work, and the losses will be very heavy.[117]

Western military thinkers, like Fuller and Lyddell Hart, are said, in Russia, to be afraid of using the masses in the next war. Their desire to limit the size of armies, supplementing manpower by a highly developed technical equipment, is merely a rationalization of the bourgeois fear of the masses.[118] This is contrasted with the view of the Commissar of War, Klamentii Voroshilov, that the next war will be carried on by large masses.

At the XVIth Congress of the Russian Communist Party the Soviet Commissar of War made the following interesting statement: "At the present time, in spite of the seemingly weighty arguments of the 'young school' as to the necessity of the mechanization of the army, the bourgeoisie still continues to hold to the large armies. These armies are of course very highly provided with the latest technical equipment. At the same time they are searching for methods to make these armies their faithful tools in every way." [119]

4. *Conclusions*

To understand the contrast between the present policy of the Soviet government and the views held in favor by it a few years ago, one has only to recall the fate of a book published, after the author's fall from grace, by the former head of the Third International, Zinoviev. His work on *The Teachings of Marx and Lenin on War* advanced the theory that a socialistic state would be justified in entering into a military agreement

[117] Budkevich, S., in *Bolshaia Sovetskaia Entsiklopediia* (Moscow, 1928), vol. XII, p. 609.

[118] Nizhechek, *op. cit.*, pp. 42, 43. [119] Bocharov, *op. cit.*, p. 54.

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with a group of capitalistic states in order to form a block against other bourgeois countries, presumably more dangerous to the Soviet state. This theory, which, to all intents and purposes, forms the stock in trade of Soviet diplomacy today, was attacked as rank heresy as late as 1932 in the pages of the official organ of the Soviet Commissariat of War.[120]

Only a few years ago the official Communist view on war, with the notable exception of Tukhachevskii's remarks in the Soviet Encyclopedia, rejected alliances with capitalistic countries even as a tactical measure against other states ruled by the bourgeoisie. The Soviet thinkers on military subjects entertained very rosy hopes of the assistance of the proletariat in the event of war between the U.S.S.R. and a capitalistic state, together with expectations of obtaining very active and important help from the Communist parties of the Western world.

Why is it, then, that the official representatives of Soviet diplomacy are very obviously hampering the efforts of the midwife—or perhaps of the several possible midwives—of the world revolution to begin work on their patients?

The Soviets have never made a secret of their fear that any major war would involve an attack by the capitalist countries on the socialist fatherland. Stalin made a report in that sense at the XVIth Congress of the Russian Communist Party,[121] and this view is a part of the Soviet credo. The Communists do not believe that the capitalist countries would permit them to sit out the next round on the bleachers. Quite to the contrary, they are firmly convinced that the next great war will be an attempt to solve the world's economic troubles at Russia's expense. As long as Germany was without a large army and air force, under a weak government, these fears were not always quite sincere. In the last few years aggression was actually expected more from the East than from the West. But the situation has changed. Mr. Duranty in a cable from Moscow toward the end of February 1935 said: [122] "Never in the fourteen years of this correspondent's experience in this country

[120] P. E., "Trotzkistskaia kontrabanda pod markoi ucheniia Lenina o voine", *Voina i Revoliutsiia*, vols. XI–XII (1932), pp. 123 *et seq.*

[121] Nizhechek, *op. cit.*, p. 35. [122] *The New York Times*, Feb. 26, 1935.

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has the fear of war seemed so widespread and so genuine as to-day." In other words, it is not any longer a vague and traditional fear of an attack by some capitalistic country or a group of such countries, but a very definite anxiety, based on fairly good grounds, of an aggression on the part of a particular, powerful country, badly in need of elbowroom.

The Soviets' fear, therefore, has nothing to do with Communism or Marxian theories. The U.S.S.R. is not a theory any longer, but a state. And the state is in very serious danger. In the eyes of the Soviet leaders this peril apparently outweighs the chances of a world revolution as a result of war. The midwife of world turmoil is therefore not so very welcome at Moscow.

The Communist parties outside of the U.S.S.R. have shrunk from 1,350,000 at the time of the Third Congress of the Third International in 1921 to less than 200,000 in 1934.[123] Instead of a weak Germany, courting the favor of the Soviets, a powerful Hitlerite state, definitely inimical in its ideology and aims, has come into being, a state not afraid to call to arms large masses of its citizenry.

Tukhachevskii, in an article in the *Pravda* in the beginning of June 1935,[124] stated that Germany upon proclamation of war would be in a position to use immediately 108 infantry divisions and that German aviation had at its disposal 3700 aeroplanes and an aviation personnel of 8000 officers and 52,000 men. He estimated that in the summer of 1935 Hitler's army would reach 850,000 men on a peace footing, and would be almost as large as the standing army of the Soviets, counting the force in the Far East. Tukhachevskii believed that the German armed forces would permit the formation of a strong army of invasion, which could advance into enemy territory at the very beginning of hostilities and play havoc with the latter's mobilization and concentration of military resources.

The Soviet leaders are realistic enough to understand that the German Communists will not be in a position to interfere

[123] Carlson, Oliver, "The sad fate of world communism", *American Mercury*, May 1935, pp. 15-24.

[124] *Pravda* (Moscow), No. 89, 1935.

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seriously with the offensive of Hitler's army and that at least in the first stages of the war it would be foolish to count upon the German proletariat for valuable support. In other words, the theories of the years when the tide of Communism in Europe was rising have little practical value at the present moment.

There is another very important reason for the Soviet government to fear war at the present moment. The Second Five Year Plan does not even aspire to solve entirely the transportation difficulties which the U.S.S.R. has been experiencing during the last few years. All the plan aims at is the liquidation of accumulation of freight on the *principal* lines of the railroads. The other lines will continue to work with inadequate facilities even after the successful completion of the Plan.[125] This augurs badly for the Soviet transport services in case of war, particularly as the recent railway construction was planned with an eye on the Far Eastern situation,[126] and very little was done in the West.

Threatened by war at the two extremes of its enormous territory, with inadequate transportation facilities, its agriculture unable to yield large surpluses even in peace time, the Soviet government watches with concern the ebb of Communism in Europe. Hope of the advent of world revolution in the immediate future was given up a long time ago, soon after the failure of the advance on Warsaw in 1920. Now the survival of socialism in one state, the U.S.S.R., is threatened by the *Drang nach Osten* of Hitlerite Germany. As a Turkish proverb has it: "A drowning man will clutch at a snake", and the U.S.S.R. is stretching out its hand to France, regardless of the various clever formulas developed by the members of the faculty of the Communist Academy. On the other hand, as a very large part of the Red Army is in the Far East, drastic steps have had to be taken to augment the peace-time establishment, so that it could meet the onslaught in the West, should that eventuality occur.

[125] U.S.S.R., The State Planning Board of the Soviet of People's Commissars of the U.S.S.R., *Proekt vtorogo piatiletnego plana razvitiia narognogo khoziaistva S.S.S.R. (1933-1937)* (Partizdat, Moscow, 1934), vol. I, p. 235.

[126] *Ibid.*, p. 242.

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And so passes, at least for the time being, the Communist dream of the abolition of the standing army in the socialist state. So ends, likewise, the proud political isolation of the citadel of the proletariat from the despicable bourgeois world and its peace machinery—the League of Nations.

How long these conclusions will remain true, is, of course, a matter of conjecture. The fundamental ideas on war, as a helpmate of the world revolution, have not been discarded. At least there is no evidence in Soviet literature to that effect. They have been merely put aside during a period when the U.S.S.R. has nothing to gain by war and runs the risk of losing everything.

As the Soviet Premier, Vyacheslav Molotov, said at the Congress of the Central Executive Committee of the U.S.S.R. on January 10, 1936: "The old world must make way for the new".[127] And when circumstances are more auspicious, the midwife of the world revolution may again become a welcome friend and ally of the enemy of the "old world".

D. FEDOTOFF WHITE

PHILADELPHIA

[127] *The New York Times*, Jan. 11, 1936.

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THE GENESIS OF THE FIRST HAGUE PEACE CONFERENCE

I

EVER since 1898 the genesis of the first Hague Peace Conference has been a subject of active speculation for the many who have not known the truth, and of uncommunicative reserve for the few who were on the inside. Fortunately, the recent publication[1] of documents from Russian archives makes possible a fuller and more accurate—though still probably not complete—reconstruction than has heretofore been possible of the origin of the famous rescript which Nicholas II's foreign minister, Count M. N. Muraviev, handed to the members of the St. Petersburg diplomatic corps on August 12/24, 1898.

Although many of the unofficial stories of the idea's origin seem to be largely fabrication, they gained wide credence, and some of them merit brief consideration. For a good many of them we are indebted to William T. Stead, the English journalist and peace agitator, who seems to have had an imagination surpassed only by his credulity, and a talent for clothing rumor with the dignity of truth exceeded only by his sincerity in doing so.[2] He was so active in telling the "inside" stories

[1] *Krasnyi Arkhiv, istoricheskii zhournal* (*Red Archives, an historical journal* [Moscow, Central Archives] [cited hereafter as *K.A.*]), "K istorii pervoi Gaagskoi konferentsii, 1899" ("Toward the history of the first Hague conference, 1899"), vol. L–LI, pp. 64-96; "Novie materiali o Gaagskoi mirnoi konferentsii, 1899" ("New materials on the Hague peace conference, 1899"), vol. LIV–LV, pp. 49-79. These documents—collected from the archives of the foreign office, the Moscow Historical Archives and the private files of Count Muraviev and edited by L. Telesheva—bear not only on the genesis of the conference idea and the development of the first circular, but also on the reception of the latter by the world and the preparation of the second circular of Dec. 30, 1898/Jan. 11, 1899.

[2] There is no support in German archives (see *Die Grosse Politik der Europäischen Kabinette, 1871-1914* [40 vols., Berlin, 1922-27] [cited hereafter as *G.P.*], vol. XV, p. 141, note 2), in British *Parliamentary Papers*, or in the

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of the conference's origin that he was thought to have had some part therein himself, but the evidence now available is all to the contrary.[3]

There is, however, some reason to believe that the Russian government was influenced by a direct *démarche* from London in 1894, which in turn may have received its stimulus from a petition circulated in that year by the Arbitration Alliance under Stead's leadership. Whether this petition and the agitation back of it were as effective in actuating the government as Stead claims,[4] is largely a matter of conjecture. Rosebery, who had just become prime minister, was personally very favorably disposed toward disarmament, knew of the petition before it was presented to the government, and may have been encouraged by it to take a step whose significance in the background of the Hague conference proposal is undeniable.

Some days before May 1, 1894, in a private conversation with Staal, the Russian ambassador, Rosebery repeated a comment he had made several times before as foreign secretary to the effect that he considered Alexander III "the most powerful guaranty of general peacefulness", and that he would make no move toward disarmament without assurance of the Tsar's support. In reporting this conversation and Rosebery's suggestion that he sound out his government confidentially, Staal said: "*On dirait que le désarmement est dans l'air.*"[5] It was in the air of St. Petersburg too, but the wind was in a different direc-

London *Times* for the story which Stead gives as to the Kaiser's intention of calling a peace conference in 1891 on the basis of a secret cabinet memorandum sent him by Lord Salisbury (see Stead, W. T., *The United States of Europe on the Eve of the Parliament of Peace* [New York, 1899], pp. 256-257).

[3] His biographer wrote: "History may say that they [Stead and Sir Randal Cremer, leader of the Interparliamentary Union] were the two men . . . who counted for most in prompting it". (Whyte, F., *The Life of W. T. Stead* [2 vols., London, 1925], vol. I, p. 122.) But this gentle hint to history must be almost completely discounted; Stead had no direct influence on anyone in St. Petersburg in 1898, and the English popular movement, in spite of its size and strength, certainly had very little if any influence on the actions of the Tsar and his advisers.

[4] Stead, *op. cit.*, p. 262.

[5] Meyendorff, A. (ed.), *Correspondance diplomatique de M. de Staal (1884-1900)* (2 vols., Paris, 1929), vol. II, 1894, No. 8.

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tion; the Tsar wrote on the margin of Staal's dispatch: "I have spoken to you [Giers] about this more than once, but I certainly do not see any positive result. Of course this would be a great benefit to humanity, and I most of all would rejoice, but I think that as yet it is utopia ".[6]

In spite of Alexander III's coolness, Staal was instructed to express his government's sympathy with the idea, to keep it *au courant* of any further confidences, and to make no promises.[7] About a month later he reported another conversation with Rosebery on disarmament,[8] and enclosed a confidential letter he had received from the prime minister in which the latter, after recalling their recent conversations and "the encouraging hint . . . that any practical propositions . . . would be favorably considered at St. Petersburg . . . ," and expressing the belief that a disarmament conference called at that time would be successful, said:

> The question then arises—how should such a conference be convoked? I am quite clear that there is one person who is preeminently fitted to summon such a gathering. The Emperor of Russia by his high, pure character, and his single minded desire for peace is the Sovereign who appears to me to be marked out as the originator of such a meeting. He is so placed as to be above the suspicion of his having an interested motive, while his power, the splendor of his position and his spirit of conciliation would attract Powers who would not care to be represented at such a Conference elsewhere. . . .

After mentioning the insignificant size of England's army and the fact of her being the largest colonial power as reasons for her inability to take the initiative, Rosebery concluded: "Other reasons would make it difficult for other nations to move, and in fine, I can conceive no Prince or Personage comparable to His Imperial Majesty for the purpose I have stated. . . ."[9]

[6] Alexander III's marginal notations on Staal's dispatches are given in *K.A.*, vol. L–LI, p. 75, note 2.

[7] Meyendorff, *op. cit.*, 1894, No. 9.

[8] *Ibid.*, 1894, No. 14.

[9] *Ibid.*, 1894, No. 11.

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To all this official flattery His Imperial Majesty reacted with the following note on the margin of Staal's covering dispatch: "All this is very appealing, but till now very risky, and in my opinion the time has not yet come to make such a proposal." This time Staal was instructed to notify Rosebery that the Russian government did not consider the moment propitious for such a move due to the current political situation, to which Rosebery agreed.[10] At this point the negotiations were dropped, and the death of Alexander III soon afterwards precluded their being renewed. The rôle played by this English *démarche* in the Russian move four years later will be considered below.

Quite naturally, the first thought of most people upon the appearance of the circular of August 12/24, 1898 was that it was the Tsar's own handiwork. He was thought to be of a peace-loving nature, and to aspire after his father's position as Europe's "arbiter of Peace"; he was also known to have an impulsive and easily influenced character. In this way an explanation was provided for the unexpected suddenness of the proposal, seemingly without the sound advice of the cabinet, and the lofty idealism expressed in it. Eulenburg, the German ambassador at Vienna, even thought he saw in the "curiously impulsive and somewhat crude character" of the document proof that it was the work of the Tsar himself.[11] The real strength of this interpretation lay, however, in the fact that it was, as it must have been, the official one. In handing the circular to Sir Charles Scott, the British ambassador at St. Petersburg, Muraviev said that it had been "drawn up at the dictation of the Emperor. . . ."[12] Similar information was evidently

[10] *Ibid.*, 1894, No. 19. The dispatch containing these instructions was not found among Staal's papers. The political difficulties referred to were probably current Anglo-French troubles in Africa. The Tsar's annotation to Staal's report of this final conversation was: "England alone profits by this, whose army itself is insignificant, but fleet enormous, which of course England will never agree to decrease."

[11] *British Documents on the Origins of the War, 1898-1914* (11 vols., London, 1927) [cited hereafter as *B.D.*], vol. I, No. 267.

[12] Russia No. 1 (1899), Accounts and Papers, British *Parliamentary Papers*, C. 9090, No. 1.

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given to the other foreign representatives, as Radolin, the German ambassador, reported to his government that the *mémoire* could be "traced to the sole initiative of His Majesty",[13] and that it "originated in the Tsar's own initiative".[14]

In spite of these definite assurances, the Tsar's qualities and limitations were too well understood in the rest of Europe for this explanation to gain much credence. The Kaiser was immediately sceptical,[15] and even Stead in conversation with Balfour spoke of the "Tsar or whoever is behind the Tsar."[16] Although the official version was generally disbelieved it was never disproved, and showed a remarkable tenacity of life despite the sabotage it suffered at the hands of Muraviev and other ministers who, observing that it was not credited anyway, proceeded to give out variations in which they themselves played more significant rôles.

As has been suggested, Nicholas II was a man of weak will, easily swayed first one way and then the other by whatever counsel was offered at the moment, and frequently under the influence of temporary favorites either within or without the cabinet. Under these circumstances speculation became rife as to who or what had been the motive power behind him in this particular move. Disregarding for the moment his ministers, there were three factors which received the most attention: tradition, the Empress and Ivan Bloch (or Jean de Bloch or Johann von Bloch).

Dynastic traditions[17] are of course too closely bound up in personality to be capable of measurement as quantitative factors in the action of the sovereign, but they can to a certain extent be judged qualitatively. It seems probable that tradition served here as a conditioning factor in the Tsar's attitude on the whole question; it seems highly improbable that it was in any way a motivating factor in the actual initiation of the

[13] *G.P.*, vol. XV, No. 4215. [14] *Ibid.*, No. 4216.

[15] See his annotations to *G.P.*, vol. XV, Nos. 4218 and 4219.

[16] Whyte, *op. cit.*, p. 128.

[17] Alexander I and the Holy Alliance, the humanitarian ideals of Nicholas I and the position of Alexander III as Europe's "arbiter of peace" were mentioned more or less frequently as influences upon Nicholas II's thought.

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peace proposal. Equal difficulty is encountered in attempting to evaluate the influence of the Empress in this particular action. Undoubtedly Alexandra Fyodorovna was endowed with a far more forceful character than her husband, whom, it is well known, she was able to "wind around her little finger", but the actual circumstances were such that she could not have had a finger in the pie until its preparation was pretty well advanced.[18] Even then, in view of her love of power, it is somewhat doubtful whether her influence would have been of the pacific tendency ascribed to it at the time. As for Bloch, the Tsar was supposed to have read his monumental work on *The Future of War,* published in 1898,[19] and been inspired by it to summon the Hague Conference. Witte, the Russian minister of finance, disposed of this legend finally in the spring of 1899 when he emphasized to Radolin "that the Tsar's fine idea to assure the peace of the world was not derived from the folios of M. Bloch".[20] Here again, though it is possible to state that Bloch's arguments played no part in the original conception of the idea, it is impossible to tell to what extent they may or may not have conditioned the Tsar's reaction when the idea was brought to him.

Nicholas II was only one of a number of persons, however, on whom the public sought to fasten the distinction of having originated the idea of the conference. The others were all cabinet or foreign office officials who had some apparent or suspected interest or hand in the summons. The story of the

[18] Both the Emperor and Empress told Kuropatkin, the minister of war, that they had talked over much and were in agreement on the armaments question (*K.A.*, vol. LIV–LV, pp. 57, 59), and Muraviev told him "that the Emperor had three times read over aloud to the Empress the draft [of the circular]" (*ibid.*, p. 57). This, however, was at least five months after the idea had been conceived.

[19] In this remarkable six-volume treatise Bloch, a Polish Jew, prominent Warsaw banker and member of the Russian imperial council, reached the conclusion that another war would annihilate the civilization of the world and that the only safeguard against such a disaster was disarmament and arbitration. According to Stead, shortly before the appearance of the first circular Bloch had an interview with the Tsar in which the latter showed great familiarity with and interest in Bloch's ideas. Stead, *op. cit.*, pp. 308 *et seq.*

[20] *G.P.*, vol. XV, No. 4251.

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part played by M. Basili is one of the most frequently repeated of all. A composite of the slightly varying versions [21] is as follows: At the Interparliamentary Conference of 1896 in Budapesth, where Basili was then consul-general for Russia, consideration of the questions of disarmament and arbitration occupied an important place in the agenda. He attended some of the sessions with great interest, and at the same time was informed by English friends that Salisbury was frightened by military expenses and would support any project for armaments limitation. He saw an opportunity for the Tsar to gain an easy victory and would have convinced Lamsdorf, the "associate minister" of foreign affairs, thereof, and the Tsar also. He sent a report containing the resolutions of the conference to the foreign office at St. Petersburg, where it was pigeonholed. But after Salisbury's Mansion House speech of November 9, 1897 looking toward international coöperation for disarmament and peace, Basili, who had in the meantime been made the chief of the Asiatic division of the foreign office, renewed his representation and resurrected his report. Lamsdorf received it favorably and sent it to the Tsar, who was enthusiastic about the idea and soon brought forth the rescript.

This story was evidently started by Stead, who made a trip through Europe in the summer of 1898 to arouse popular interest in the Russian proposal and saw the Tsar and most of the St. Petersburg officials. He probably got it either from Nicholas II himself [22] or from Basili whom he saw repeatedly and who was then in charge of the conference negotiations. Komarov, another foreign office functionary, gave the same story with additional variations to Radolin a year later,[23] and Professor Wehberg repeats it, quoting a communication to him from Barons Nolde and Taube, former colleagues of his in the Wilhelmstrasse.[24] Such an array of presumably reliable wit-

[21] Stead, *op. cit.*, pp. 264-265; Evans, H., *Sir Randal Cremer, His Life and Work* (London, 1909), pp. 177-179; Hauser, H. (ed.), *Histoire diplomatique de l'Europe (1871-1914)* (2 vols., Paris, 1929), vol. I, p. 468.

[22] Tryon, J. L., *The Interparliamentary Union and Its Work* (pamphlet, Boston, 1910), p. 8.

[23] *G.P.*, vol. XV, No. 4350.

[24] *K.A.*, vol. L–LI, p. 64, note 1.

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nesses (with the possible exception of Stead) makes it probable that there is a foundation of truth to the story, whether the embroidery about Salisbury and Lamsdorf is accurate or not.

The real corroboration lies, however, in circumstantial evidence. It may have been coincidence that Basili was taken from the relatively unimportant post of consul-general in Budapesth, suddenly made an important division head in the foreign office, and given charge of the conference negotiations. It may have been chance that the foreign office's first *mémoire* on the proposed conference—the draft of which was made by Priklonski, one of Basili's assistants—mentions the Interparliamentary Conference as a forerunner of the peace movement and introduces the idea of arbitration. But it is far more probable that the interrelationship of all these circumstances is founded on more solid ground than mere fortuity. The assertion can be made, in any case, however, that whether the Tsar saw Basili's report or not, it played no part in the genesis of the conference idea, though it undoubtedly was influential in the later development thereof.[25]

Count Muraviev, the Tsar's foreign minister, quite naturally received a considerable share of speculative credit for originating the proposal, and would probably have received more had he not enjoyed a rather well-founded reputation for ignorance. Nevertheless he was thought by some—particularly in England—to be wily enough to have instigated the Tsar's rescript with some ulterior purpose in mind.[26] Nothing could be farther from the truth. A different explanation—this one largely German—was that of egoism; he proposed the conference in order to enjoy the prestige he would gain as president of an international congress in St. Petersburg.[27] Disproof of this assumption is available in the fact that he expressed almost from the first a desire to have the conference elsewhere than at the Russian capital.[28] The most concrete foundations for the

[25] Unfortunately the report which Basili is said to have made has not been published along with the other documents from the foreign ministry archives.

[26] Stead, *op. cit.*, p. 296.

[27] *G.P.*, vol. XV, No. 4216; *B.D.*, vol. I, Nos. 263 and 271.

[28] *G.P.*, vol. L, No. 4223.

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belief in Muraviev's rôle of the man behind the Tsar are some statements of a self-promoting nature which he himself made to various diplomats.[29] It is not to be denied of course that the minister of foreign affairs played a significant part in the evolution of the conference plan, but his part in originating it was far smaller than he would have liked the world to think.

Two other members of the cabinet received more or less frequent mention as possible initiators of the circular. Count Witte, the minister of finance, was many times referred to as the moving force, his interest being explained on the one hand by the impossibility of obtaining a necessary foreign loan without some evidence that the proceeds would not go for armaments, and on the other by his desire to use money which might be cut from military expenditures toward expanding the fleet. Kuropatkin, the minister of war, also received a small though fairly accurate amount of speculative credit. As a matter of fact he and Witte played key parts in the conception and germination of the conference idea.

II

Strange as it may seem, the evidence indicates that the germ from which the Hague Peace Conference developed first took form on February 27/March 11, 1898 in the mind of Kuropatkin, the Russian minister of war. The direct stimulus was the prospective necessity of large expenditures for installation of new rapid-fire field guns in the Russian artillery in order to match similar improvements being made in the German and Austrian armies. Albeit Kuropatkin was originally concerned with this problem alone, a brief glance at the general political and armaments situation is indispensable to an understanding of the immediate circumstances and of the later developments.

Only a few days previously, on March 6, a ninety-nine year lease of the port of Kiao-chow had been granted to Germany, whose seizure of that port in November 1897 had caused great displeasure in St. Petersburg and had stimulated Russian occupation of Port Arthur. Almost simultaneously the negotia-

[29] *Ibid.*, No. 4231; *Foreign Relations of the United States* (Washington, annually), *1898*, p. 542.

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tions toward Anglo-Russian coöperation in China, instituted by Salisbury in January, had come to a somewhat acrimonious end over Russian insistence on recognition of her position in Port Arthur and English participation with Germany in a loan to China.[30] At the same time, Russia's relations with Austria over the return of former King Milan to Serbia [31] and with Austria and Germany over the Cretan situation [32] were rather strained. Troubles in Armenia added to her worries.

An equally if not more serious situation presented itself on the armaments side of the ledger. Some idea of the increase in tempo of the European arms race during the years immediately preceding 1898 may be gained from the following table. The figures for England, Germany and Russia are in millions of pounds, marks and rubles, respectively.[33]

	Naval expenditures			*Military expenditures*		
	England	*Germany*	*Russia*	*England*	*Germany*	*Russia*
1895.....	20	78	55	18	562	285
1896.....	22	84	58	18	565	294
1897.....	20	92	60	19	614	294
1898.....	24	114	67	20	632	303

A marked acceleration is apparent in the appropriations for the year 1898 with the exception of the German military expenditures, where the greatest rise took place a year in advance. The great German navy law of 1898 had also been introduced into the Reichstag in the preceding November. On February 26/March 10, 1898 Nicholas II issued a ukase appropriating ninety million rubles over the next seven years to the building up of the Russian fleet,[34] and on the same day the largest navy esti-

[30] *B.D.*, vol. I, chap. i, *passim*. [31] *K.A.*, vol. LIV–LV, p. 74, note 4.

[32] *Ibid.*, p. 69, note 1.

[33] Figures are compiled from: Ogorodnikov, *Istoricheskii obzor razvitiia i deiatelnosti morskovo ministerstva za sto let evo suchchestvovaniia, 1802-1902* (*Historical survey of the development and activity of the ministry of marine in the one hundred years of its existence, 1802-1902*) (St. Petersburg, 1902), p. 259; Clarke, Col. G. S., *Russia's Sea Power* (London, 1898), p. 117; Brassey's *Naval Annual* (Portsmouth, Eng.); and the *Statesman's Yearbook* (London).

[34] *The Times* (London), Mar. 11, 1898, gives the text of the ukase.

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mates in English history were announced in the British House of Commons.[35]

It was with figures such as these staring him in the face, and the probable necessity of spending another one hundred and twenty million rubles on reëquipment of the artillery threatening him, that the Russian minister of war sat down, on February 27/March 11, 1898, to write a report to the Tsar on the cost of armaments in Europe. Kuropatkin says[36] that while he was putting into the report various statistics about rapid-fire field guns and their cost, the idea came to him that if Austria would agree to a reciprocal moratorium on armaments of this type, it might be possible to save the money that otherwise would have to be spent on the new guns. For this idea he afterwards claimed sole credit, though he evidently did not at the time feel sure enough of the merits of the plan to include it in the report. To the Emperor the next day, however, he broached the subject orally and apparently with some trepidation for fear that "such a bold idea" might offend the sovereign. It is surprising enough to find a war minister making a disarmament proposal, but it is indeed a curious situation when he trembles to make it to the supposedly most peace-loving monarch in Europe. He was immediately reassured though, by the Tsar, who "having thought, answered warmly: 'Evidently you still know me little if you suppose that I could reprove you for such an idea. I sympathize with it. For a long time I was even against the adoption of new guns in our army.'"[37] Just how enthusiastic the Emperor really was about the idea is not at all clear from this, but the supposition may be safely made that had he shown great enthusiasm, Kuropatkin would have been more likely to exaggerate than to understate the warmth of his brain-child's welcome. As it is, he merely says that "His Imperial Majesty acknowledged this idea as worthy of attention", and commissioned him to discuss it with Muraviev.[38] He took the proposition that same day to the foreign minister, who, he says with probable overstatement, "received it very sympathetically, even joyfully".[39]

[35] *Ibid.*
[36] *K.A.*, vol. LIV–LV, p. 56, Feb. 28.
[37] *Ibid.*, p. 55.
[38] *Ibid.*, vol. L–LI, p. 72.
[39] *Ibid.*, vol. LIV–LV, p. 56.

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Kuropatkin prepared a *mémoire* of this conversation with Muraviev in the form of a letter to the latter dated March 1/13, 1898,[40] in which he evidently elaborated and made more definitive his proposal for an agreement with Austria. His recurrent emphasis therein on the undesirability of the enormous and growing military expenses and his recognition of the danger that armaments competition might lead to war are especially significant as proofs that his primary concern was military-financial, not political. True, there is a hint in the reference to Russia's "historic contemporary tasks" which, borne out by his diary account [41] of the conversation with Muraviev, indicates that the minister of war was not unaware of other and more ultimate possibilities latent in such an agreement as he proposed with Austria. By the end of September, when he reported [42] to the Tsar before going to Paris, the political implications had become paramount in his mind; but in February he did not see much if at all beyond the possibility of avoiding a gigantic disbursement for the purpose of keeping up with German and Austrian artillery rearmament.

Attention should be called to the fact that Kuropatkin wrote this letter after his conversation with the minister of foreign affairs, so that some of its contents may actually be the unacknowledged contribution of the latter to the development of the scheme. However, the possible truth of this hypothesis is supported only by the war minister's reported tendency to disregard exactness. Muraviev, in any case, said nothing, and immediately upon receipt of the letter took it to Witte for his opinion of the proposal.

Witte was primarily a man of peace—not from any humanitarian idealism, but because he knew that only under peaceful conditions could he carry out the policies of Russian internal development and eastward expansion for which he constantly worked. He saw Russia's future in the economic penetration of the Far East, particularly of China, to whom Russia was to be an "intimate and privileged friend", not asking territory for herself and not permitting others to seize it. Con-

[40] *Ibid.*, vol. L–LI, pp. 70 *et seq.* [41] *Ibid.*, vol. LIV–LV, p. 56.

[42] *Ibid.*, pp. 58 *et seq.*

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currently Witte planned to develop Russia's internal financial, commercial and industrial power, and particularly her railroads. In 1897 he accomplished the feat of stabilizing the ruble and putting gold into circulation, and he was of course anxious that this great work be not destroyed by any serious threat to the nation's credit. In line with these policies it is natural that he looked with disfavor on any armament expenditures that might hinder Russia's economic development. According to his friend Dillon, "Witte grudged every ruble that he had to spend on armaments",[43] and Stead thought that he was the only one of the ministers who cared for the conference proposal.[44] But Dillon did not distinguish between military and naval armaments, and Stead failed to see through Witte's attitude toward the conference. Growing from the identical root of his primary consideration for Russia's economic development, the great finance minister had another policy—which he perhaps considered more vital—for promoting and protecting that development: he was a big navy man. His attitude on the whole question is neatly expressed in his words to Muraviev à propos of Kuropatkin's proposal: " . . . suppose Europe could contrive to disband the bulk of her land forces, do with a mere nominal army, and confine her defenses to warships, would she not thrive in an unprecedented way and guide the best part of the globe?"[45] He later expressed the hope that the conference would actually come to some measure of coöperation along this line,[46] and it may be that immediately upon hearing Kuropatkin's suggestion he saw the possibilities in it.

At any rate, when Muraviev, on or about March 2/14, brought him the war minister's letter, with the information that it had been read closely by the Tsar and sent on for criticism, Witte lost no time in revealing the impracticability of the proposal as it stood. He told Muraviev that it was a good idea in theory, but that it would not work for the simple reason that Austria would not accept it. She would suspect either

[43] Dillon, E. J., *The Eclipse of Russia* (New York, 1918), p. 275.

[44] Whyte, *op. cit.*, p. 136. [45] Dillon, *op. cit.*, p. 276.

[46] *G.P.*, vol. XV, Nos. 4232 and 4251.

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that Russia was on the brink of insolvency or that the move was just a camouflage to conceal some ulterior design against herself; and in either case she would decide that a further increase of armaments would be the very thing necessary to weaken or checkmate Russia. Witte further pointed out that such a move would undermine the nation's credit in Europe to a degree making impossible any more flotations abroad for even the most fundamental needs, and offered, if the artillery expenditure were vital, to find the money somehow. He went on to show the foreign minister how armaments "exhaust the people and deprive them of the possibility of living comfortably; that from such a state of things grows the socialistic teaching and the propaganda of socialism in all its aspects in Western Europe, which is already beginning to come over to us. . . ."[47] Muraviev, Witte says, was considerably impressed by this, "the more so since, although my thoughts represented nothing particularly new, for Muraviev with his complete lack of culture in the serious sense of the word, many of my ideas appeared to be absolutely new."[48] The minister of foreign affairs later made considerable use of this "red flag" argument.

Witte did not stop at merely criticizing the war minister's plan, but went on to seek a method at the same time of satisfying the Tsar's desire to act and of accomplishing his own ends. As he told Dillon,

> In other words, I knew that what was wanted was some ruse by means of which we could get Austria to stay her hand and discuss disarmament in lieu of investing in the improved gun. Within these limits then I had to work. I walked up and down the room for some time in silence, pondering the different aspects of the matter and giving utterance to my half-formed thoughts as they emerged into the realm of consciousness. They centered naturally and necessarily around my old pet idea of a league of pacific nations vying with each other in trade, industry, science, arts, inventions, and I said to myself

[47] Witte, S. U., *Vospominaniia: Tsartvovanie Nikolaia II* (*Memoirs: Reign of Nicholas II*) (2 vols., Berlin, 1922), vol. I, p. 144.

[48] *Ibid.*

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that even if the opportunity had not yet come to draw nearer to that, there would be no harm in setting the powers talking about it. And that started me.[49]

He suggested the possibility of including all the world in the plan, although he felt quite sure that not much more could be accomplished than to start people thinking about disarmament. He believed that militarism was a fatal enemy to cultural advance, but at the same time he was unwilling that Russia, through one-sided disarmament, should be weakened in the war which he saw as inevitable. The interview as Witte recounted it to Dillon, ended thus:

Witte: Does His Majesty wish the money for the new weapon to be provided, or is it on the War Minister's plan that he lays the chief stress?

Muraviev: He desires that General Kuropatkin's scheme should be discussed in council. It has taken his fancy. And he asked me to get your general impression in advance. I am sure he means to carry out the idea in some shape, and he hopes you will design a practical one.

Witte: Well, in that case say that I approve the principle underlying it, but I would apply it not to Austria and Russia only, but to all the nations of the globe. In this way we should avoid invidious distinctions and leave no ground for misgivings. A proposal of this kind might be addressed to all nations, great and small; it would be welcomed by many. Whether the few would put off ordering the new artillery is another matter. But if that be the theme to which I am to propose variations, you have them now. There can be none other.[50]

A year later Witte told Radolin, the German ambassador, that in supporting the plan he "had been guided by points of view that were *practical* for *his* purposes", that military expenditures had played no part in his attitude, and that his principal hope was that the conference would divert and re-

[49] Dillon, *op. cit.*, p. 274. [50] *Ibid.*

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strain certain high officials in St. Petersburg who wanted to pursue an adventurous policy in China and Turkey.[51] At least two of the high officials can easily be identified as Muraviev and the Tsar, who together had spoiled Witte's plan for peaceful penetration of China by the seizure of Port Arthur. It may be surmised that if there is any truth in this statement at all, some of the officials in question were probably in Whitehall instead of St. Petersburg. To Dillon, however, Witte said that his motive in enlarging on Kuropatkin's proposal had been that of economy,[52] and support for this statement is available in the fact that he needed a large loan at the time, that the Paris market had been closed to him, and that neither London nor Berlin, without some proof of Russia's pacific intentions, would loosen their purse strings. This last explanation is not only better supported, but on the face of it much more logical.

At an uncertain time after the conversation between the foreign and finance ministers,[53] a council meeting was held to consider Kuropatkin's plan. The latter read and explained his plan for agreement with Austria; accounts of what happened then differ according to the interest or whim of the teller. Kuropatkin says [54] that Muraviev commended the proposal but suggested that it be broadened to include all of Europe except England, who was to be isolated. The final stipulation sounds very much like Witte, but the war minister does not even mention the latter's presence at the meeting. Witte's own version [55] is that he severely criticized the proposal, much as he had to Muraviev previously, and that this time the latter and his assistant, Lamsdorf, seconded him. Whatever the details may have been, Kuropatkin's plan was voted down. Whereupon Muraviev, saying that the Emperor had received "very sympathetically" a suggestion he had recently made that Russia should take up the question of reduction or at least limitation of armaments, produced and read the draft of a

[51] *G.P.*, vol. XV, No. 4251. [52] Dillon, *op. cit.*, p. 274.

[53] Witte (*op. cit.*, p. 144) places it "a few days" afterwards, but his *Memoirs* were written twelve or fifteen years after the occurrence; the meeting probably took place a few weeks afterwards, on or about March 24 / April 5.

[54] *K.A.*, vol. LIV–LV, p. 56. [55] Witte, *op. cit.*, p. 144.

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circular to the powers.[56] Witte recognized it as a development of his conversation with Muraviev, but content to let the latter have credit, said nothing and supported it as being at least better than the war minister's plan. It was adopted by the council in spite of the opposition offered by Kuropatkin on the ground that it was less practical than his own.

The contents of the foreign office *mémoire* of March 24/April 5 may be divided into three categories: (1) ideas which may have been appropriated from Kuropatkin's letter to Muraviev; (2) ideas which may have been adapted from Witte's suggestions to Muraviev; and (3) ideas which had not been previously advanced. The first group includes a repetition—in very similar phraseology—of the war minister's exposition of the fact of competition and follow-the-leader in armaments, and a mention of "hundreds of millions of rubles" as the cost of modern military preparations. Reference is again made to the possibility of war as a consequence of armed peace, and to Russia's being the obvious initiator of any move toward disarmament. The similarity of these points, both in ideology and wording, to those made by Kuropatkin leaves little doubt but that they were taken directly from his letter. In the second category, enlargement of the scheme to include all countries, and mention of the possible use of the proposal as a weapon against radicalism are most certainly from Witte. The humanitarian concern voiced in the note for the economic welfare of the people is also most likely an adaptation from his ideas, although it might have come to Muraviev from the Tsar or through the latter from Kuropatkin, who says[57] that he mentioned it to the sovereign in making his original proposition.

In the absence of evidence to the contrary, the remainder of the note must be presumed to be the work of the foreign office itself. The draft, which bears significant corrections by Lamsdorf, is in the handwriting of Priklonski,[58] then head of the

[56] There is every reason to believe that the draft which Witte mentions here is identical with the foreign office *mémoire* of March 24/April 5 discussed in the following paragraph. The text of the *mémoire* appears in *K.A.*, vol. L–LI, pp. 73-77.

[57] *K.A.*, vol. LIV–LV, pp. 55-56, Feb. 28.

[58] *Ibid.*, vol. L–LI, p. 65.

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first section of the Asiatic division of the ministry under Basili. The coöperation in the project of Priklonski and probably Basili provides a logical explanation and source for the reference to the Interparliamentary Conference and for the introduction of the arbitration idea, which became of great importance in the actual accomplishments of the Hague Conference. The allusion to Rosebery's disarmament proposal of 1894—outlined above—should perhaps be credited to Lamsdorf, who was at that time also " associate minister " of foreign affairs to Giers. The fact that England had wanted Russia to initiate a movement for the reduction of armaments only four years earlier, must certainly have encouraged the St. Petersburg foreign office to think that a similar proposal would still be greeted favorably by that country. The author or authors of the remaining points cannot be identified. Notice must be taken, however, of the appearance of two references to current German arming as necessitating some plan to stabilize peace, and of the suggestion that a proportional decrease in armaments would favor Russia since she would retain her numerical superiority.

During the period between Kuropatkin's letter (March 1/13) and this note of the foreign office (March 24/April 5), the political situation had changed very little. As already mentioned, the Salisbury overture toward coöperation in China was finally dropped about February 17/March 1, and with the announcement on March 15/27 of the Sino-Russian treaty for the lease of Port Arthur, England boiled with indignation. The final acquisition of an ice-free port on the Pacific is mentioned in the foreign office note as making the moment particularly propitious for Russia in the initiation of a disarmament move, but no reference is made to England's attitude. Nothing really new developed in the armaments situation in the same period. The English naval estimates introduced into Parliament March 10 were passed *in toto* on April 1, and the German navy law, under consideration for the previous four or five months, was approaching final reading on April 10. The natural conclusion, therefore, is that the moment at which the note was drafted was determined by nothing more than the

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time necessary for the foreign ministry to rework Kuropatkin's proposal into a form consonant with Witte's and its own ideas.

The Muraviev plan, after approval by the council, was sent to the Tsar who forwarded it, with a notation, to his uncle, Grand Duke Alexis Alexandrovitch, for perusal and comment. The Grand Duke, who was the actual head of the navy, criticized it in a letter to the Tsar;[59] beyond this and the fact that one of the lithograph copies in the archives bears the notation "*non avenu*", the further history of the memorandum is not a matter of record,[60] but the development of the whole project was evidently entirely in the hands of the foreign office from this point on. The Tsar admittedly held the opinions of his uncle in high esteem, and the latter's adverse influence is a possible explanation of the three months' hiatus in development of the conference plans which followed his letter to the Tsar. Another explanation may be that the foreign office was simply giving the project prolonged consideration. The facts that Nicholas II had a vacillating nature and pliant will, and that deliberate consideration by the foreign ministry is not evident in its later memorandum, make the first explanation seem more plausible, though in the absence of any proof one way or the other it can remain only a hypothesis.

The next apparent step in working out the final form of the first circular to the powers was not taken until June 29/July 11. At this time Muraviev presented to the Tsar a report and the draft of a circular in which the first part of the foreign office

[59] *Ibid.*, p. 78. The Grand Duke's comment was in general very unfavorable. He doubted if it would succeed, and he believed that a gradual and non-competitive increase rather than a decrease in armaments would be the best thing for Russia. The only value he could find in the plan was the possibility it held of consolidating Russia's military superiority in numbers. An interesting sidelight on the Grand Duke's influence with the Tsar, and perhaps on the latter's sincerity in the whole disarmament scheme, is provided by the great naval ukase of Feb. 26/Mar. 10. In announcing to the navy the issuance of the ukase, Alexis Alexandrovitch asserted that the Tsar had received most graciously a *mémoire* written by him on building the Russian fleet up to equality, and had annotated it, "May God bless and crown with success the great work of strengthening the national fleet for the welfare and glory of Russia". (London *Times*, Mar. 16, 1898, p. 5.)

[60] *K.A.*, vol. L–LI, p. 66.

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note of March 24/April 5 was repeated in paraphrase.[61] The Tsar showed it to Kuropatkin who wrote in his diary on July 11/23:

> The Emperor showed me a report of the ministry of foreign affairs: a statement to all ambassadors on the necessity of suspending armaments and of calling a conference to this end. The report appears to be a development of my letter to Count Muraviev about an agreement with Austria in order not to commence rearmament of the artillery.[62]

Evidently the war minister approved of the draft, as he goes on to tell of the hearty congratulations which he gave the Emperor. The non-publication of this report and draft-circular of Muraviev's along with the other new documents from the foreign ministry archives leaves an unfortunate and unexplained gap in the series of steps leading up to the first circular.

After this abortive move the foreign office turned its attention for the next month to other and more vital concerns. Since the note of March 24/April 5 the political situation had become somewhat more complex and was to become even more so. Two developments were especially significant: the Anglo-German *rapprochement* of 1898, and the Anglo-Russian clashes in the Far East.

The informal conversations looking toward an Anglo-German alliance which Chamberlain, the pro-German and anti-Russian colonial secretary, had initiated in February 1898 with Eckardstein reached a deadlock in April, and Chamberlain thought that Russia had got wind of them.[63] But it does not appear that St. Petersburg knew anything of them until apprised by a letter of May 30 from "Willy" to "Nicky".[64] Neither "Nicky" nor his ministers seem to have been much perturbed at this news of Anglo-German *rapprochement,* but soon afterwards the same two countries began other negotia-

[61] *Ibid.*

[62] *K.A.*, vol. LIV–LV, p. 57, July 11.

[63] Gooch, G. P., *History of Modern Europe, 1878-1919* (London, 1923), p. 299.

[64] *Ibid.*, pp. 300 *et seq.* See *B.D.*, vol. I, p. 5, ed. note.

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tions which did make the Russian government uneasy. These were the exchanges, started in June, which eventually led to the conclusion of a treaty for the division of the Portuguese African colonies. Behind it, Russia mistakenly believed, was concealed the possibility of some general agreement directed against her, and current German arming lent confirmation thereto.[65]

Anglo-Russian relations, after the breakdown about March first of the negotiations initiated by Salisbury, grew very touchy over Chinese affairs, and late in June became critical on the subject of Russian plans for building the Newchwang-Shanhaikwan railroad; public opinion in England reached a high degree of excitement in July. Lessar, the Russian chargé d'affaires in London, in his dispatch of August 5/17, wrote that although England was not ready to declare war, "if the present mood continues, it is almost inevitable that the government, under pressure from the press and chauvinists, will be forced to adopt measures in China which will entail similar action on our part, and will make the situation even more critical."[66] On the same day Balfour sent instructions to Scott to point out to Muraviev that the railway violated British treaty rights, and to warn him that such a pretension, "if persisted in, must inevitably produce the most serious international difficulties. It has already aroused in this country a feeling of great exasperation."[67] Several days before this Muraviev had made a report to the Tsar in which he pointed out the necessity of choosing between the risk of war with England and agreement with her. In concluding the report he said:

> . . . if the time has come to make a choice of one or the other direction, it would seem necessary to keep in mind all the national importance of the tasks before us in the Far East, the accomplishment of which may be attained only on condition of the preservation of normal relations with all the rival powers in China until the time when Russia stands firmly on the shores of the Pacific ocean.[68]

[65] *K.A.*, vol. L–LI, p. 68.
[66] *Ibid.*, pp. 66-67.
[67] *B.D.*, vol. I, No. 57.
[68] *K.A.*, vol. L–LI, p. 67.

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The Tsar's annotation to this was, "Peace is most important of all if honor is not involved."[69] On the basis of this Muraviev was probably able to assure Scott that Russia had no intention of permitting the question to become serious. Thus was the way cleared and a strong incentive provided for the immediate issuance of the call to the peace conference.

In the meantime, however, an event which must not be disregarded had taken place in England. On July 22 Mr. Goschen, the first lord of the admiralty, introduced in Parliament supplementary naval estimates of £15,000,000 for the next four years. In his speech in the House of Commons announcing the bill he said:

> In stating the Supplementary Estimate, I regret that it should have to be my misfortune to have to introduce the name of any Foreign Power, but it is impossible to conceal the fact that it is the action of Russia and the programme on which she has entered which is the cause of our strengthening our fleet and taking parallel action with her.[70]

Such an utterance in connection with such an appropriation must have had some repercussion in St. Petersburg, and may have provided a further stimulation to action toward limitation at least of land armaments.

Such was the setting of the final step in the first call to the conference. The draft of the first circular to the powers, prepared in the foreign office, was presented for the Tsar's approval with a note from Muraviev of August 9/21. In the foreign minister's accompanying note the Kaiser's purported intention of increasing his army appears as the sole motivation for action at the moment. Arguing that a military increment such as the German Emperor proposed would, as in the past, eventually necessitate corresponding increases in Russia's armament and military budget, and that it would evoke dangerous discontent in Italy, Austria-Hungary and even Germany itself, Muraviev avowed that the current moment was supremely opportune for issuing the call—the more so that it contradicted the Kaiser's views. The emphasis on an indefinite potential

[69] *Ibid.*

[70] London *Times*, July 23, 1898, p. 8.

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increase in the German army at a time when political relations and naval competition with England were extremely sharp, is surprising to say the least. The Kaiser suspected that the Russian government had aimed the disarmament move directly at England,[71] but the references to German military armaments, both here and in the foreign office note of March 24/April 5, seem to indicate that he himself was the immediate target. They show at least that the Russian government most certainly did not intend to include the limitation of naval armaments in its plan. In view of later developments it is possible to say that the proposal did conceal an indirect design against British naval armament, since any saving from decreased military expenditures would help Russia to bolster up her opposition to England in the Far East and on the sea.

Nicholas II on August 11/23, 1898 gave his approval of the circular, and the next day at the regular weekly diplomatic reception in the foreign office, Muraviev handed copies of it to all the representatives accredited in St. Petersburg. In the circular itself [72] only the slightest formal resemblance is apparent to Kuropatkin's letter of five months earlier, but it is quite obviously a modified and polished revision of the foreign office note. Dillon, evidently on Witte's word, credits Lamsdorf with having put the circular in its final form,[73] and this seems not improbable, though Witte himself very likely knew it only at second-hand.

There can be absolutely no doubt but that the circular and its conference proposal came as a complete surprise to everyone outside of the Russian government. Even Russia's ally France received no previous hint that the step was under preparation, and felt slighted in consequence. Muraviev did spare French feelings to the extent of delivering the memorandum—"just in order to maintain due form", as he told Eulenburg [74]—to

[71] See his notations to *G.P.*, vol. XV, No. 4218.

[72] The text of the first circular can be found in almost any work relating to the Hague Conferences. That in Scott, J. B., *The Hague Conventions and Declarations of 1899 and 1907* (New York, 1917), pp. xv *et seq.*, is the "authoritative" English translation.

[73] Dillon, *op. cit.*, p. 277.

[74] *G.P.*, vol. XV, No. 4231.

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the French ambassador two hours before he handed it to the German representative. The French government expressed its appreciation of this thoughtfulness,[75] but also as a matter of form, since France was far from satisfied with Russia's single-handed action. When Kuropatkin visited Paris in October 1898, he prepared and gave to President Faure, as his own personal opinion, the obvious explanation that if the proposal for any reason seemed to be a coöperative project of the Dual Alliance, its immediate failure would be insured by opposition from the Triple Alliance. Consequently it had been necessary not to make any distinctions, and to keep France as much in the dark as all the other nations.[76] Previous notification to France is not once suggested in the Russian documents prior to the appearance of the circular. Apparently either the question never occurred to the authorities in St. Petersburg, or more probably, they considered the reasons against such action so evident as not to need formal mention.[77]

III

At the time when the first circular was presented and during the following two or three months Muraviev and his colleagues in the Russian government found it expedient to make detailed and repeated explanations of just what the proposal meant—and what it did not mean. To a considerable extent the explanations were of the nature of back-watering, taking in sail and pouring oil on the troubled waters of Europe—particularly after Paris, London, Berlin and Vienna had had time to react and the storm had broken in full force.

[75] *K.A.*, vol. L–LI, p. 81.

[76] *Ibid.*, pp. 85-86.

[77] The suspicion which arose at the time in Paris that the Kaiser had been consulted in advance had no basis in fact. Nevertheless it seems to have persisted even as late as 1929, the publication date of an *Histoire diplomatique de l'Europe*, edited by Professor Henri Hauser. In this symposium Professor Leon Cahen, author of the section on the Hague Conference, makes the statement that the circular "was first presented to Wilhelm II with an affectionate note from Nicholas II. The Tsar asked both the support and counsel of the Kaiser, whose signature he probably wished to obtain", and that only after this preliminary *démarche* and the check it met was the circular issued to all the powers (vol. I, p. 469). Since Professor Cahen cites no source for his information, he must take full responsibility for this unsupported story.

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At first all went smoothly and the official expositions were more or less perfunctory,[78] although their tone sometimes indicated anticipation of a not wholly sympathetic reception for the circular in European capitals, and foreshadowed the future emasculation of the project. By about August 19/31 the fun had begun in earnest. The French ambassador—presumably in answer to uneasy questions from Paris—received the assurance that the proposal was in no way intended to injure France's interests or to disturb the solidarity of Franco-Russian relations; that limitation of armaments, not reduction, was what the Russian government had in mind; and that no political questions would be permitted on the agenda of the conference.[79] The same statements on disarmament and political questions were made to the German ambassador, and Muraviev added that the conference must avoid questions which would touch the susceptibilities of any power; that it must have a purely technical character; and that its program could be worked out only at the conference itself.[80] Substantially the same assurances were given the British ambassador and the American minister.[81]

Even as late as September and October Muraviev and Kuropatkin were still making clear in Vienna and Paris that limitation of arms, not disarmament, was proposed, that political questions would not be permitted, and so forth. The fact that such emphatic, frequent and repeated explanations were necessary is indicative of the deep-seated uneasiness and dislike with which European statesmen viewed the prospect of a "peace" conference which, they feared, might attempt to take away from them their means of defense, or revise or recognize some political situation with which they were or were not satisfied, as the case might be. Alsace-Lorraine was of course the problem which came first to everyone's mind.

[78] See Hirst, F. W., *The Political Economy of War* (New York, 1915), pp. 83 *et seq.*; *G.P.*, vol. XV, No. 4215; and in particular, *ibid.*, No. 4216, and Russia No. 1 (1899), Accounts and Papers, British *Parliamentary Papers*, C. 9090, No. 1.

[79] *K.A.*, vol. L–LI, p. 80.

[80] *G.P.*, vol. XV, No. 4223.

[81] *B.D.*, vol. I, No. 264; *Foreign Relations of the United States, 1898*, p. 542.

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These fears were probably not justified in the first place; they certainly were not after the first wave of reaction to the circular had reached St. Petersburg. Very possibly the members of the Russian government would have liked to see something done in the way of positive disarmament, but they never expected it as a result of the proposal. As a matter of fact they all shared the belief which Nicholas II expressed to Radolin that the conference could do little more than start people to thinking of disarmament. Witte told the Tsar that the conference could have no practical results in the near or even in the distant future;[82] Muraviev told Eulenburg that it was "not necessary that anything particular" should result from the conference, but nevertheless something surprising and pleasant might come of it;[83] Lamsdorf told Pierce, American chargé, that he doubted if any results at all would be attainable, and the latter wrote to his government: "I do not think that it is the expectation of anyone in the Imperial Government that the end in view can be even approximately reached at an early date."[84]

There was just as little solid foundation for the other general fear—that Russia hoped to accomplish any such political object in Europe as a restoration of Alsace and Lorraine. Obviously, a proposal for an international agreement of any kind whatsoever would first of all run against the obstacle of this problem. Unless the question were strictly and completely avoided, the proposal would most certainly be wrecked by the opposition of both France and Germany. A similar difficulty lay in the attitude of Austria-Hungary and Serbia toward Bosnia-Herzegovina, and of England and France toward Egypt. Russia's statesmen could not have been unaware of these obstacles, even though no hint is contained in the documents that up to the time of the circular they had been considered at all. Being aware of them, and at the same time making a proposal as they did, must indicate that the Tsar and his ministers intended from the first to avoid them entirely. The only contradiction

[82] Witte, *op. cit.*, p. 145. [83] *G.P.*, vol. XV, No. 4231.

[84] *Foreign Relations of the United States, 1898*, p. 546. Also *K.A.*, vol. LIV–LV, p. 57, July 11.

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to this interpretation is Muraviev's statement to Eulenburg that he hoped to use the conference to put *revanche* in the background.[85] Inasmuch, however, as the foreign minister said this on his way to Paris, it was probably intended to calm the German government's possible uneasiness as to any Franco-Russian agreement on the question. If Muraviev ever really had any such purpose—which is doubtful—he certainly discarded it after his visit to Paris.

If the Russian government claimed to hold no hope for disarmament and concealed no intentions of disturbing the European political situation, what did it think to accomplish by its call to a conference? Was it actuated solely by the "lofty humanitarian considerations" about which so much was written and spoken? Quite evidently it was not, and few at the time had any illusions on this point. Pierce put it most succinctly in saying that the economic side of the question was "not lost sight of or obscured by any undue enthusiasm over its humanitarian aspect" on the part of officials in St. Petersburg.[86] On the other hand, was the prime motive one of pure deceit, as Dillon would have us believe?

> However high we may rate the contributory causes of the peace movement inaugurated by Nicholas II, history will retain the decisive fact that the motives of its prime author were to hoodwink the Austrian government and to enable the Tsar's War Minister to steal a march on his country's future enemies.[87]

Again, quite evidently not. If Kuropatkin had any ulterior military object, he did not reveal it in his letter to Muraviev, who would have been as glad as anyone to help prepare a trap for Austria. Moreover, how Russia could steal a march by entering into a completely mutual agreement with a nation whose ally was a jump ahead of Russia's in armaments, is far from clear. The Russian minister of war, to judge from his letter to Muraviev, was almost as considerate of Austria's economic ill health as he was of Russia's. Actually, of course,

[85] *G.P.*, vol. XV, No. 4231.

[86] *Foreign Relations of the United States, 1898*, p. 546.

[87] Dillon, *op. cit.*, p. 278.

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he cared little about the Austrian financial position, but he was acutely conscious of the poor state of the Russian exchequer. The Russian government's extremely unsatisfactory fiscal condition and the realization that a great new expenditure for rearming the artillery might bring the treasury to the brink of disaster were, then, the stimuli behind the original proposal from which the Hague Conference developed. The Russian move was primarily the result of economic necessity; only secondarily did the elements of altruism and political or military gain enter into it.[88]

Of the subordinate factors, probably the most important was the desire to improve Russia's position in the Far East. As Kuropatkin vaguely saw it, his proposal would make it possible to store up the nation's strength and resources for a future conflict in the East; in the mind of Witte—and possibly also of Muraviev—this aspect became active preparation for that conflict by expending for new warships the money saved on artillery. Apparently, and probably in fact, strange as it seems, the finance minister was not as worried about the country's financial condition as was the war minister. In this instance, however, Witte's governing consideration was rather that Russia should be prepared at any cost for the war with England in the Far East which, according to Dillon, he believed to be inevitable. Probably next in importance among the secondary factors was the calculation that a proportional decrease in armies would preserve Russia's numerical superiority —a calculation which, however pleasing it may have been to Russian military circles, still did not win their support to the proposal and soon dropped out of the picture. Least important was the humanitarian aspect. The evaluation of a more or less abstract factor such as this, presents greater difficulty and is unavoidably more uncertain. A great deal was said about lofty idealism, humanitarian motives and so forth, but the characters of the persons who said it and who were respon-

[88] A similar conclusion—that Russia's financial condition was at the bottom of the conference proposal—was unanimously reached by Wehberg, Montgelas, Thimme, Zorn and Kriege in a series of articles in volume V of *Die Vorgeschichte des Weltkrieges* (Berlin, 1929); see *K.A.*, vol. L–LI, p. 65.

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sible for the conference idea give logical corroboration to the conclusion that in spite of their lip service to the ideal of human welfare, its principal interest for them was in the excellent "front" it provided for their scheme. Nicholas II was a possible though doubtful exception to this; on him would shine the spotlight of glory for bringing the blessing of peace to the world—a consideration not to be lightly disregarded. But in any case, the part played by the Tsar in the actual genesis and evolution of the conference proposal was so passive as to make his attitude on human welfare almost of negligible importance.

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ADMINISTRATIVE ADJUDICATION: AN ANALYSIS I

IT is a commonplace that the exigencies of effective administration permit little more than lip service to the classic notion that all government activity should be chopped into blocks and handed out, like Gaul, to three separate custodians. The rejection of that particular formula, however, in no sense implies that the allocation of governmental powers is best left to whim or caprice. Responsible government will scarcely be won and maintained without constant scrutiny of the functioning of existing agencies. Where experience reveals that concentration of authority leads to abuse, it is the part of wisdom to consider whether officials should not be stripped of power. Among the latest to lift a powerful voice in protest against the wide range of authority currently vested in administrative officers is the committee on administrative law of the American Bar Association, which recommended in its 1934 report that national administrative officers surrender to the courts those functions which are judicial in character.[1]

The Issue as to Administrative Power

The modern American administrative tribunal was not created without cause; it will not be stripped of its judicial authority without protest. Persons who doubt the wisdom of our present reliance on administrative agencies for the performance of functions traditionally lodged in the courts need not be surprised if an unconcerned public forces them to assume the burden of proving that adjudication by administrative bodies should be terminated. In that case they must be prepared to do more than denounce in general terms this departure from the ways of the Fathers. If there has been abuse in the vesting of governmental powers over persons and prop-

[1] The report of the committee is published in the American Bar Association's *Advance Program Including Committee and Other Reports to be Presented at the 57th Annual Meeting* (1934), 200-225, and in 59 *Rep. Am. Bar Assoc.* (1934), 539-64.

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erty, the objectionable practices should be isolated and the evils revealed in clearest outline. It is not likely that any serious critic of the present régime would divest administrative bodies of all their powers which involve law determination, fact finding or the issuance of coercive orders. It is high time that the critic of the modern administrative tribunal indicate the specific powers, procedures or activities of the public official which he believes to be wrongly located in administrative hands.[2]

If criticism is to induce action, it must be predicated upon a clear picture of the functioning or processing of the administrative authority. It is hoped that the following pages will *first,* indicate the nature of administrative tribunals and their powers, *second,* set forth distinctly those various acts or doings of an important administrative body which smack of adjudication, and *third,* suggest some of the considerations which ought to govern in any decision as to where certain governmental powers ought to be lodged. This should permit discussion to center clearly upon those particular acts or features of administrative action which may be believed to mark the spot at which administrative power should be halted.

THE TRIBUNAL AND ITS POWERS

Any intelligent program for the reallocation of judicial functions must take into account the nature of the administrative tribunal, the types of controversy or situation which are subject to administrative adjudication, and the legal effect of the decision and order of the administrative agency. Powers confidently entrusted to a department head in the national govern-

[2] The terms "judicial functions" and "adjudication" have no accepted meanings. For attempts at definition see: J. Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass., 1927), 4, note 4; W. A. Robson, *Justice and Administrative Law* (London, 1928), 69-74; F. F. Blachly and M. Oatman, *Administrative Legislation and Adjudication* (Washington, 1934), 91; W. H. Pillsbury, "Administrative Tribunals" (1923) 36 *Harvard L. R.* 407, 420, 422; Committee on Ministers' Powers: *Report* (Command 4060; London, 1932), 73. *Cf.* R. A. Brown, "Administrative Commissions and the Judicial Power" (1935) 19 *Minnesota L. R.* 261, 265-75; F. Green, "Separation of Governmental Powers" (1920) 29 *Yale L. J.* 369; C. N. Goodwin, remarks in 59 *Rep. Am. Bar Assoc.* (1934), 149-50.

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ment may seem strangely out of place in the hands of a village pound master. Administrative valuation of property for taxation may meet the approval of one who would insist that only a court should fix the value of property taken under eminent domain. One may be willing that the public official should find and certify the facts as to actual use of water by parties disputing irrigation rights, but refuse to permit the same officer to say finally what the rights of each party shall be.

An examination of the statutory authority of administrative officers reveals that every type of official or agency is entrusted with authority over persons and property. Elective and appointive official, single officer and commission of overlapping terms, amateur and professional, full-time public servant and *ad hoc* tribunal, expert technician and *ex officio* board—one type or the other may be preferred for the delicate task of sitting in judgment over disputing persons, but all are utilized.[3] In one state the township trustee fixes the value of sheep killed by dogs [4] and determines the rights of property owners in dispute as to a line fence; [5] in another state a town or county board or panel of laymen makes the award.[6] The registration of securities, licensing of investment brokers, and revocation of the right to deal in securities are at one time vested in an *ex officio* board,[7] at a later date in an elective department head,[8] and in another jurisdiction in a full-time commission.[9] The amateur, elective, township assessor performs the same service as the city's imported professional property appraiser;

[3] National administrative tribunals are classified and described in Blachly and Oatman, *op. cit., supra,* note 2, ch. 7. There is nowhere in print a comparable treatment of state administrative tribunals.

[4] Burns' Annotated Indiana Statutes, 1933, § 16-311.

[5] *Ibid.*, §§ 30-203, 30-306.

[6] Smith-Hurd, Revised Statutes of Illinois, 1933, ch. 54, §§ 7-10; Code of Iowa, 1931, §§ 5452-5457; Compiled Laws of Michigan, 1929, §§ 1065-1081; North Carolina Code, 1927, §§ 1835-1836; Pennsylvania Statute Law, 1920, §§ 10848-10852.

[7] Laws of Indiana, 1921, p. 254.

[8] Burns' Annotated Indiana Statutes, 1933, § 25-802.

[9] 48 Statutes at Large 881, ch. 404 (1934).

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each is first instance tribunal if not court of last resort for the great majority of taxpayers.[10]

Examination of the statutes will reveal also that administrative officials are utilized to adjudicate nearly every conceivable kind of controversy. An action against a utility to recover charges in excess of those stipulated in the schedule presents issues of slight concern to anyone except the immediate parties; the interest of the general public is satisfied with the assurance that just laws are impartially enforced. The litigation of such a controversy involves, essentially, inquiry into past events and the pronouncement of a judgment based on findings as to actual occurrences; there is no occasion to frame an order specifying the conduct of one or more of the parties over a future period of years. Workmen's accident claims, disputes as to damage incurred in shipment, proceedings to recover demurrage, and a host of other actions before administrative officials illustrate this type of adjudication—the damage suit before a judge wanting wig and ermine.[11]

[10] *Cf.* E. B. Stason, "Judicial Review of Tax Errors—Effect of Failure to Resort to Administrative Remedies" (1930) 28 *Michigan L. R.* 637; R. Magill, "Finality of Determination of the Commissioner of Internal Revenue" (1928) 28 *Columbia L. R.* 563, 30 *ibid.* 147 (1930).

[11] For a concise but inclusive analysis of administrative adjudication of workmen's compensation claims, see R. H. Smith, "Administrative Justice" (1923) 18 *Illinois L. R.* 211. See also R. A. Brown, *The Administration of Workmen's Compensation* (Madison, 1933), 72-73, 81; A. J. Altmeyer, *The Industrial Commission of Wisconsin* (Madison, 1932), 25-104; H. D. Laube, "Administrative Problems in Wisconsin's Workmen's Compensation" (1925) 3 *Wisconsin L. R.* 65. On administrative adjudication of claims based on overcharge, demurrage and damage to property by a carrier, see I. S. Rosenbaum, "Overcharge and Damage Claims before the Ohio Public Utilities Commission" (1930) 4 *Univ. of Cincinnati L. R.* 29; R. V. Fletcher, "Power of the Interstate Commerce Commission to Award Damages" (1916) 25 *Yale L. J.* 427.

The constitutionality of administrative adjudication of workmen's compensation claims seems now generally accepted. See Crowell v. Benson, 285 U. S. 22, 76 L. Ed. 598, 52 Sup. Ct. 285 (1932); Voehl v. Indemnity Ins. Co. of North America, 288 U. S. 162, 77 L. Ed. 676, 53 Sup. Ct. 380 (1933); Borgnis v. Falk Co., 147 Wis. 327, 133 N. W. 209 (1911); and cases cited in 28 R. C. L. 744, note 1, and p. 749, note 2. The validity of administrative determination of reparations claims has been less frequently questioned but in nearly all states where litigated, held valid. See State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 So. 969 (1908); Illinois Central R. Co. v. Paducah Brewery

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At the other extreme from the adjustment of claims is the order fixing a general schedule of utility charges. The two proceedings bear little resemblance except that parties are formally joined in controversy, and a hearing precedes the order. In the one instance the decision concerns only the immediate parties; in the other the entire consuming public is affected. In the claims case the decision turns on events already brought to completion; in the rate case a course of future conduct is specified. In between the two situations an endless array of controversy-types presents every kind of combination and every degree of variation upon these two characteristics. The revocation of a license turns on the story of past events but is of vital concern to the general public. The promulgation of a side track agreement [12] or specification of a farm crossing structure [13] is of concern primarily to the immediate parties but constitutes a program for future conduct.

The claims dispute and the rate case also differ in the nature of the law which governs the proceedings. In either case there is an area for the play of discretion, but the possible al-

Co., 157 Ky. 357, 163 S. W. 239 (1914); Cleveland C. C. & St. L. Ry. Co. v. Mills Bros., 101 Ohio St. 173, 128 N. E. 81 (1920); American Foundry Co. v. Chicago I. & L. Ry. Co., 178 N. E. 295 (Ind. App., 1931); State *ex rel.* Boynton v. Public Service Comm., 135 Kan. 491, 11 Pac. (2d) 999 (1932). *Contra*, State *ex rel.* Missouri Pacific R. Co. v. Public Service Comm., 303 Mo. 212, 259 S. W. 445 (1924). *Cf.* Carolina Glass Co. v. State, 87 S. C. 270, 69 S. E. 391 (1910), affd. 240 U. S. 305, 36 Sup. Ct. 293, 60 L. Ed. 658 (1916). See also Brown, *op. cit., supra*, note 2, at pp. 300-303.

The validity of the authority given the Interstate Commerce Commission to make "award of damages" seems not to have been directly questioned in court, but constitutionality has been assumed in a great number of cases, e. g., in Arizona Grocery Co. v. A. T. & S. F. Ry. Co., 284 U. S. 370, 52 Sup. Ct. 183, 76 L. Ed. 348 (1932). See citations in 49 U. S. C. A., § 16, par. (1).

Illustrative commission decisions making reparations awards can be found in P. U. R. 1915 A, 879 (La.); 1920 B, 488 (Wash.); 1922 A, 712 (Calif.); 1923 E, 145 (Pa.); 1924 D, 156 (Ill.); 1925 C, 464 (Wis.); 1927 B, 796 (Utah). [For identification of citation forms, see *infra*, note 33.]

[12] *Cf.* N. Y. Public Service Law, § 27; and Adams Lumber Co. v. Long Island R. R. Co. [1928] Ann. Rep. 167. [For identification of citation form, see *infra*, note 33.]

[13] *Cf.* Bolger v. Boston & Maine R. R., 82 N. H. 372, 134 Atl. 524 (1926); Holmberg v. Chicago, M. & St. P. R. R. Co., 115 Neb. 727, 214 N. W. 746 (1927).

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ternatives are greatly reduced in the former type of action. Where interest in the issue is narrowly restricted, a rule or formula can be worked out with closer approach to satisfactoriness than in cases where the conflicting interests of a multitude of people must be weighed and compromised. Similarly, where the order is in the nature of correction or redress of a specific injury, satisfactory rules can more nearly be achieved than where the official is called upon to outline a course of future conduct for the parties. Consequently one expects to find, on the one hand, a controlling law which specifies the rights of parties with approximately that degree of exactitude which governs trial courts in damage suits, on the other hand, the use of such non-confining terms as "reasonable", "public interest" or "good cause". At the one extreme public policy can be stated with a degree of definiteness in advance of the cause of action; at the other extreme the adjudicating authority is required not only to determine the facts and attach significance to events, but also to formulate the rules which the legislature failed to supply. An intelligent program for the withdrawal of adjudicatory power from administrative agencies will take these factors seriously into account.[14]

Willingness to tolerate a particular administrative tribunal will also depend in large measure upon the legal effect of its orders. No adequate survey of the spread of administrative powers has yet been made;[15] they range in their compelling force from timid advice and feeble reprimand to the power to bind and to loose. An Arkansas rate tribunal has no power to command; its findings become the basis for action by other authorities and are accepted as evidence in courts of law.[16] The culmination of an extensive investigation by the National Tariff Commission is a memorandum to the Chief Executive.[17] The recommendations of the Interstate Commerce Commission

[14] *Cf.* second part of this article, to appear in the next number of this journal.

[15] The most comprehensive effort is E. Freund, *Administrative Powers over Persons and Property* (Chicago, 1928). *Cf.* T. R. Powell, "Administrative Exercise of the Police Power" (1911) 24 *Harvard L. R.* 268, 333, 441.

[16] Acts of Arkansas, 1931, Act 72.

[17] U. S. Code, Title 19, §§ 96-98, 102. *Cf.* N. Y. Public Health Law, § 6.

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for reorganization of a railroad corporation under section 77 of the National Bankruptcy Act are tentative and do not take effect until approved by the federal district court.[18]

Where administrative orders are given legal effect, they become subject to judicial review if contested. Under one type of statute no presumption of lawfulness is attached to the decision of the official; the court proceeds in a trial *de novo*.[19] Under another the court may inquire into both the law and the findings of fact, but solely on the basis of the record certified by the administrative agency.[20] In still another situation, the administrative body is made final as to the facts, reviewable only on questions of law.[21] Lastly, a few tribunals seem to be insulated against judicial supervision on any point save possibly as to determination of jurisdiction.[22]

Administrative action is usually thought of as confined to the control of persons and property. Actually there is an extensive system of appeals in the United States through which administrative tribunals approve, revise and set aside the action of other administrative and legislative authorities. A number of national administrative courts of appeal are described in a recent volume.[23] The equalization of taxes by county and state authorities is a familiar phenomenon.[24] Many state administrative authorities possess reviewing power

[18] U. S. Code, Title 11, § 205.

[19] E. g., N. Y. Farms & Markets Law, § 37; Page's Ohio General Code, 1926, §§ 5848, 5849; *In re* Littlefield, 61 Wash. 150, 112 Pac. 234 (1910).

[20] E. g., Lake Shore Elec. Ry. Co. v. Public Utilities Comm., 125 Ohio St. 48, 180 N. E. 552 (1932).

[21] N. Y. Civil Practice Act, § 1304; New York & Queens Gas Co. v. McCall, 219 N. Y. 84, 113 N. E. 795 (1916).

[22] U. S. *ex rel.* Riverside Oil Co. v. Hitchcock, 190 U. S. 316, 324-25, 47 L. Ed. 1074 (1903); N. Y. Education Law, § 890; Bullock v. Cooley, 225 N. Y. 566, 122 N. E. 630 (1925); People *ex rel.* Underhill v. Skinner, 74 App. Div. 58, 77 N. Y. S. 36 (2d Dept., 1902); Board of Education v. Tuttle, 125 Misc. 230, 211 N. Y. S. 413 (Madison Co. Term, 1925), affd. 217 App. Div. 704 (3d Dept., 1926).

[23] Blachly and Oatman, *op. cit., supra*, note 2, at pp. 120 *et seq.*

[24] H. L. Lutz, *The State Tax Commission* (Cambridge, Mass., 1918); S. C. Wallace, *State Administrative Supervision over Cities in the United States* (New York, 1928), 74-86.

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even more strikingly similar to that of judicial courts. The New York Education Law lists seven grounds on which persons aggrieved by the action of local school authorities may appeal to the State Commissioner of Education. Many of these appeals are on strict questions of law, and on such questions the decision of the commissioner is declared final and "not subject to question or review in any place or court whatever." [25] The Indiana Public Service Commission is authorized to hear complaints entered by utility companies against municipal ordinances, contracts and determinations; if the Commission finds the municipal act to be "unreasonable", that act, according to the statute, "shall be void." [26] Illustrations could be multiplied.[27]

The power of administrative officials to assess fines and commit to imprisonment is a controverted point in American constitutional law. Where violation of administrative orders is made a penal offense, it is customary to fix the penalty in the statute and provide for its enforcement by a court on the application of a public official or interested party.[28] Commissions are often given authority to command testimony and documents by means of *subpoena,* but compliance is usually obtained either by making disobedience a misdemeanor punishable in a judicial court, or by providing that a supplementary *subpoena* shall issue from a court of record.[29] There is *dictum* in at

[25] N. Y. Education Law, § 890. *Cf.* Bullock v. Cooley, People *ex rel.* Underhill v. Skinner, and Board of Education v. Tuttle, *supra,* note 22. For illustrative cases of review, on legal grounds, by the New York Commissioner of Education, see: 22 Dept. R. 303, 315, 318, 322, 326, 376 (1920); 23 Dept. R. 32, 350, 447 (1920); 25 Dept. R. 65, 186, 275, 441, 454 (1921). [For identification of citation forms, see *infra,* note 33.]

[26] Burns' Annotated Indiana Statutes, 1933, § 54-614. *Cf.* Indiana Bell Telep. Co. v. Bloomington, P. U. R. 1925 A, 438 (Ind.); Indianapolis Water Co. v. Indianapolis, P. U. R. 1928 C, 169 (Ind).

[27] See Wallace, *op. cit., passim.*

[28] E. g., N. Y. Public Service Law, §§ 24, 56, 57, 58, 73, 74, 86, 87, 89-k, 89-m, 102, 103; N. Y. Farms & Markets Law, § 35; N. Y. Public Health Law, § 17; Wisconsin Statutes, 1931, § 143.11.

[29] E. g., U. S. Code, Title 49, § 12; *ibid.,* Title 7, § 15; Acts of Arkansas, 1933, Act 72, § 3 (p. 205); N. Y. Public Service Law, § 19; North Carolina Code, 1927, § 1091; Page's Ohio General Code, 1926, §§ 531, 609, 614-16, 871-

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least one United States Supreme Court decision to the effect that an administrative tribunal cannot "consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment." [30] Statutes conferring such power must also meet the uncertain and often unpredictable standards of judges as to separation and non-delegation of powers. The exercise of punitive authority by administrative bodies has been pronounced invalid on these grounds in a few states,[31] but judicial policies as to separation and non-delegation can be overridden by specific constitutional provision. There exist today a number of administrative tribunals created by state constitutions and empowered by those instruments to fix penalties and commit to imprisonment. Perhaps these provisions will ultimately be held in conflict with the Fourteenth Amendment to the Constitution

30. Such provisions are now usually held valid. Interstate Commerce Comm. v. Brimson, 154 U. S. 447, 38 L. Ed. 1047, 14 Sup. Ct. 1125 (1894); Hirschfield v. Cook, 227 N. Y. 297, 125 N. E. 504 (1919); Rhinehart v. State, 121 Tenn. 420, 117 S. W. 508 (1908); People *ex rel.* Akin v. Kipley, 171 Ill. 44, 49 N. E. 229 (1897). *Contra,* State *ex rel.* Haughey v. Ryan, 182 Mo. 349, 81 S. W. 435 (1904).

[30] Interstate Commerce Comm. v. Brimson, *supra,* note 29, at p. 485. *Contra,* People v. Learned, 5 Hun 626 (N. Y., 1875). *Cf.* D. E. Lilienthal, "The Power of Governmental Agencies to Compel Testimony" 39 *Harvard L. R.* 694 (1926); A. Langeluttig, "Constitutional Limitations on Administrative Power of Investigation" (1933) 28 *Illinois L. R.* 508.

[31] Langenberg v. Decker, 131 Ind. 471, 31 N. E. 190 (1892); *In re* Sims, 54 Kan. 1, 37 Pac. 135 (1894); *In re* Huron, 58 Kan. 152, 48 Pac. 574 (1897); People v. Swena, 88 Colo. 337, 296 Pac. 271 (1931). *Cf. In re* Mason, 43 Fed. 510 (D. Minn., 1890). It has also been held that administrative authorities cannot be authorized to fix penalties by means of rules and regulations. Board of Harbor Commrs. v. Excelsior Redwood Co., 88 Calif. 491, 26 Pac. 375 (1891); Davis v. State, 126 Ark. 260, 190 S. W. 436 (1916). *Cf.* People v. Grant, 242 App. Div. 310, 275 N. Y. S. 74 (3d Dept., 1934). But where the statute authorizes the administrative body to fix "penalties" for failure of a carrier to furnish cars promptly, and the administrative rule fixes an amount to be paid to the disappointed shipper, the payment can be called a "civil liability" instead of a fine or penalty in the true sense and the exercise of power held valid. State v. Atlantic Coast Line R. R. Co., 56 Fla. 617, 47 So. 969 (1908); Southern Ry. Co. v. Melton, 133 Ga. 277, 65 S. E. 665 (1909); Zuber v. Southern Ry. Co., 9 Ga. App. 531, 71 S. E. 937 (1911). *Cf.* R. A. Brown, "Administrative Commissions and the Judicial Power" (1935) 19 *Minnesota L. R.* 261, 293-95.

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of the United States, but it cannot be denied that they are being used today to give force and effect to administrative orders.[32]

The foregoing pages should demonstrate that there is no typical American administrative tribunal. The power to sit in judgment is at one time vested in a body created especially for the purpose, on another occasion lodged in whatever official or body happens to be handy; there is a wide diversity in the types of problem or controversy over which the administrative

[32] Constitutionality may depend largely on what is read into and what is read out of Chicago, M. & St. P. Ry. Co. v. Minnesota, 134 U. S. 418, 33 L. Ed. 970, 10 Sup. Ct. 462 (1890); Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 64 L. Ed. 908, 40 Sup. Ct. 527 (1920). The question of constitutionality was avoided in Champlin Refining Co. v. Corporation Comm., 51 Fed. (2d) 823, 827 (1931), affd. and mod. 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed. 1062 (1932).

Some interesting constitutional provisions are: Arizona, Art. XV, sec. 4 (Corporation Commission shall, in respect to corporations, "have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpœna, attachment, and punishment"); California, Art. XII, sec. 22 (Railroad Commission "shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record"); Florida, Art. V, sec. 35 (legislature "may clothe any Railroad Commission with judicial powers in all matters connected with the functions of their office"); Louisiana, Art. VI, sec. 4 (Public Service Commission may "punish for contempt as fully as is provided by law for the district courts"); Oklahoma, Art. IX, sec. 19 (Corporation Commission "shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company . . . such fines or other penalties as may be prescribed or authorized by this Constitution or by law" [*sic*]). For judicial interpretation of the California and the Louisiana provisions see: VanHoosear v. Railroad Comm., 189 Calif. 228, 207 Pac. 903 (1922); State *ex rel.* Milling v. Louisiana Public Service Comm., 154 La. 752, 98 So. 175 (1923); State *ex rel.* Williams v. Louisiana Public Service Comm., 161 La. 293, 108 So. 487 (1926). For illustration of commission action to punish for contempt, see: *Re* McCapes, P. U. R. 1927 C, 98 (Calif.); Oklahoma Natural Gas Corp. v. Wagoner Gas Co., P. U. R. 1930 B, 407 (Okla.). For commission orders fixing the amount of fines, see: Louisiana Public Service Comm. v. Johnson Motor Freight Lines, P. U. R. 1929 C, 122 (La.); Public Service Comm. v. Lehighton Water Supply Co., P. U. R. 1929 E, 118 (Pa.); State *ex rel.* Freeling v. Southwestern Bell Telep. Co., P. U. R. 1919 C, 255 (Okla.).

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official is given jurisdiction; orders of the tribunals vary widely in their legal effect. These differences become significant when one sets himself to the task of marking the boundaries between those activities which ought to be exercised by the administrative body and those which seem more properly fitted for the judiciary.

The Adjudicative Process

One of the objectives of this article, as stated in an early paragraph, is to "set forth distinctly those various acts or doings of an important administrative body which smack of adjudication". This analysis of the adjudicative process will be based on the work of the New York Public Service Commission. Few, if any, administrative bodies in the United States have been endowed with more sweeping authority over rights in private property than has this tribunal. In nearly three decades of existence, the New York Public Service Commission has issued several thousand orders having the force of law, made after notice and hearing and according to a procedure very much like that of a court. Practically all of these orders are accompanied by written opinions, more than a thousand of which are in print. They are rich in evidence as to the process of administrative adjudication.[33]

[33] The New York Public Service Commission is the direct successor of the New York Public Service Commission, Second District. The latter mentioned, created in 1907, was by a series of acts given jurisdiction outside the metropolitan area of Greater New York, over gas, electric, rail transportation, steam heating, and motor vehicle utilities, and, throughout the entire state, over telephone and telegraph. A First District Commission enjoyed jurisdiction over similar utilities, except telephone and telegraph, within the metropolitan area. In 1921 a Transit Commission was created to regulate transportation utilities in Greater New York; a Public Service Commission was given jurisdiction over transportation outside the metropolis, and over all other regulated utilities throughout the state. To the utilities listed above has been added public water supply. The nature of the authority of the Commission has from time to time been altered by statute, and has at no time been the same in respect to all utilities. "In general, however, the powers of the commissions have encompassed authority to grant or refuse the certificate of convenience and necessity; to allow, or refuse to allow, the issuance of securities; to permit or refuse to permit, the sale, transfer, lease, *etc.*, of securities, property or franchises; to fix rates; to order improvements in service; and to supervise the establishment and alteration of railroad-highway crossings." C. S. Hyneman, "The Case Law of the New York Public Service Commission" (1934)

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The work of an administrative tribunal, like that of other social agencies, refuses to fit perfectly into any group of precise categories, but present purposes will be served by treating the process of adjudication under four heads: (1) the determination of jurisdiction, or whether there is legal power to act; (2) the determination of questions of law other than those involving jurisdiction; (3) the determination of facts involving little emphasis on questions of law; and (4) the supplying of public policy where the legislature provided a minimum of guiding rules.

1. *The Determination of Jurisdiction*

No administrative officer, intending to comply with the law, can act without first determining what are his legal duties and what are the legal restrictions upon him. The policeman must decide whether he is within the territorial bounds in which he has jurisdiction to arrest before making a seizure. The game warden must consider whether the statute empowers him to do so before destroying a cache of dynamite secreted suspiciously close to nets and fish traps. The national bank examiner or his superior, the Comptroller of the Currency, must determine just what are "the affairs" of a credit institution in order not to exceed the limits in the statute providing that the examiner "shall have power to make a thorough examination of all the affairs of the bank." [34]

34 *Columbia L. R.* 67, 70. Citations to statutes are given in this article.

The published opinions of the Commission are found in four collections. The opinions of the Public Service Commission, Second District, are printed in Reports of Decisions of the Public Service Commission, Second District, of the State of New York, volumes I to IX (1910-21). Most of the opinions of the present Public Service Commission are printed in volume I of each Annual Report of the Public Service Commission (1922——). Some opinions which do not appear in either of these collections are printed in the Department Reports of the State of New York (Albany, 1914——). An occasional opinion in neither of these state publications will be found in Public Utilities Reports (1915——).

In citing cases in the above collections, the following abbreviations will be used: The Reports of Decisions will be cited as Dec. The Annual Report will be cited as Ann. Rep. (the volume number is omitted, since all cases appear in volume I of each Annual Report). The Department Reports will be cited as Dept. R. The Public Utilities Reports will be given the customary form of citation: P. U. R.

34 United States Code, Title 12, § 481.

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In most instances, no doubt, decisions as to existence or non-existence of power to act are made without conscious deliberation; jurisdiction is assumed by the official and not questioned by the governed. But where matters of high importance are at stake and minds differ as to the fair interpretation of statutory language, the decision becomes not only conscious but of great moment. More than a hundred opinions of the New York Public Service Commission are in print in which the question of jurisdiction is more or less thoroughly considered; in not a few of these cases appear analyses of statutes and court decisions which would do credit to a court of last resort.[35]

Jurisdictional issues in the opinions of the New York Public Service Commission have involved principally: determination of the territorial limits of the Commission's power, decisions as to whether particular types of industry or particular firms are subject to commission control in any respect or manner, and determination of the extent or nature of the Commission's power over a particular utility which is admitted to be in some way under administrative regulation.

The determination of strict questions of territorial jurisdiction has usually involved no difficult questions of law. Thus the decision of the Commission that it had no authority over grade crossings in Buffalo required no elaborate analysis of statutes or judicial decisions.[36] Very similar are questions as to jurisdiction over motor bus service in particular communities.[37] Exceptions to this rule occur in situations where interstate commerce is involved. Complicated statutory and constitutional considerations almost invariably plague the Commission in any case where its authority is challenged on the

[35] A good illustration is Petition of Huntington R. R. Co., 6 Dec. 326 (1917). The opinions of the commissioners, in this case, devoted more than 70 pages to a consideration of the jurisdiction of the Commission to alter fares fixed by local franchises, and cited more than 50 different court decisions, as well as a number of statutes.

[36] Application of Harry Fisher, 3 Dec. 382 (1913).

[37] See Petition of Becraft, 5 Dec. 51 (1916); Petition of Bartholomew, 5 Dec. 96 (1916); Petition of Neil, 6 Dec. 309 (1917); Petition of Niagara Scenic Bus Lines [1925] Ann. Rep. 242. An interesting street railway case is Petition of Yonkers R. R. Co. [1921] Ann. Rep. 288.

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ground that the national government has occupied the field or possesses exclusive authority.[38]

When the Commission's authority over a particular form of operation is in dispute, the decision may depend almost altogether upon the determination of certain facts. Thus in considering whether one Walter L. Messenger was required to obtain a certificate of convenience and necessity there seems to have been little dispute as to what constitutes being a common carrier within the meaning of the statute; the controversy centered in the facts as to the availability of Messenger's service to the public.[39] More frequently, however, both fact and law are in dispute.[40] In not a few cases the facts are admitted; the sole concern is as to whether the statute subjects a particular type of industry to regulation. Thus the Commission has had to decide whether it can issue to a corporation organized under the business corporations law a certificate of convenience and necessity authorizing it to furnish electric service to the general public,[41] and, again, whether a manufacturing company is required to obtain commission approval to carry current across a public highway to service its own property.[42] In other cases the Commission has held as to its jurisdiction over motor trucking service,[43] barge lines,[44] elevators carrying passengers from bottom to top of a hill,[45] and a railroad sidetrack crossing a

[38] *Re* Improvement Assoc. v. Erie R. R. Co., 2 Dec. 73 (1909); Lancaster Machine & Knife Works v. Erie R. R. Co., 4 Dec. 111 (1914); Davis v. Pennsylvania Gas Co., 6 Dec. 258 (1917); Petition of Engelke, 27 Dept. R. 383 (1922).

[39] Elmira-Ithaca Motor Trans. Co. v. Messenger, 24 Dept. R. 667 (1921).

[40] See, e. g., Oswegatchie Light & Power Co. v. Northern Power Co., 1 Dec. 350 (1908); *Re* discontinuance of joint rates, 4 Dec. 97 (1914); Application of Phoenix Gas & Elec. Co., 4 Dec. 192 (1914).

[41] Petition of Brooklyn Cooperage Co., 9 Dept. R. 229 (1916); Petition of Cayuga Power Corp., 6 Dec. 214 (1917); *Re* Gair Realty Corp. [1931] Ann. Rep. 400.

[42] Fulton Light, Heat & Power Co. v. Granby Pulp & Paper Co., 5 Dec. 340 (1916).

[43] Petition of Graves, 4 Dec. 304 (1920).

[44] Murray's Lines v. Delaware & Hudson Co., 2 Dec. 127 (1909).

[45] Kelly v. American Real Estate Co., 5 Dept. R. 245 (1915).

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highway to serve a state institution.[46] In many of these cases statutory phraseology gave little guidance to a puzzled Commission, and judicial expression was lacking. Perhaps no better illustration of this sort of situation can be found than in those cases where the Commission had to decide whether the assumption of control over the railroads and telegraphs by the national government during the World War withdrew those utilities from state control.[47]

More numerous and more difficult are the cases in which the Commission has to determine the exact nature and extent of its power over persons and firms which are conceded to be subject to its jurisdiction for certain purposes. In some of these cases a territorial question enters. This is illustrated by a case where the Commission held that a statute fixing the price of gas "manufactured, furnished or sold in" Albany ought not be interpreted as fixing the price of gas manufactured in Albany and sold outside the city, a decision which left the Commission free to fix the price of exported gas.[48] In other cases a time element enters. An example of this was the determination that while the Commission could prescribe in some detail the specifications to be followed in constructing a railroad-highway crossing structure, it could not at any subsequent date order any change in the structure, no matter how obsolete, inadequate or dangerous it might have become.[49]

[46] Application of New York Central & Hudson River R. R., 2 Dec. 682 (1911).

[47] The Commission asserted jurisdiction over nationally operated railroads in Shippers v. Pennsylvania R. R. Co., 7 Dec. 339 (1918), and in Village of Granville v. Delaware & Hudson Co., 8 Dec. 41 (1919); and asserted jurisdiction over telephones in Tanenbaum v. Burleson, 8 Dec. 27 (1919). *Cf.* Batavia Chamber of Commerce v. U. S. Railroad Administration, 8 Dec. 397 (1919).

[48] Application of Municipal Gas Co., 8 Dec. 11 (1919). See also: Karl v. United Traction Co., 2 Dec. 298 (1909); Application of Niagara River & Eastern R. R. Co., 5 Dec. 348 (1915); Petition of Schenectady Ry. Co., 8 Dec. 182 (1919); Petition of Rochester, Niagara Falls & Buffalo Coach Lines [1930] Ann. Rep. 383.

[49] Town Board of Newstead v. New York Central & Hudson River R. R. Co., 3 Dec. 250 (1912). For other cases where a time element was involved, see: *Re* Pine Street Crossing, 2 Dec. 223 (1909); Buffalo Gas Co. v. City of Buffalo, 3 Dec. 553 (1913); Petition of Rockland Light & Power Co. [1921]

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The American people have not yet achieved such mastery of the art of law making as will enable them to so word statutes that all parties, the governed and the governing alike, will agree as to the exact extent of administrative powers. Plain words can often be given more than one plain meaning. Thus the grant of power to order "safe and adequate service" will be urged as authority to forbid excessive noise and smoke.[50] The power to order changes in the construction of railroad and street railway tracks "in order to promote the security or convenience of the public or employees" can be interpreted to permit an order in the interest of the public using the streets and highways.[51]

Exceptions to statutory grants of power are a source of constant perplexity to the administrative officer. They are constantly being implied by the one who wants to escape regulation; witness the argument that securities issued in reorganization of a corporation sold in a judicial sale need not be submitted for commission approval.[52] Even where effort is made to state the exception explicitly, doubts arise. The New York Public Service Law (section 66, sub. 13) provided that an electric company must file with the Commission and keep open to the public its schedules of rates and charges, but went on to say that the terms of the subdivision of the act should "not apply to state, municipal or federal contracts." The majority of the Commission held that the exception precluded the Commission from exerting any control whatever over rates fixed in a contract with a municipality for street lighting. One commissioner, on the other hand, put forth a strong contention that the exception in the statute referred only to the filing of schedules and not to the determination of charge.[53]

Ann. Rep. 148; Petition of Lockport Light, Heat & Power Co. [1921] Ann. Rep. 177.

[50] The Commission refused to extend its jurisdiction this far. Roesch v. New York Central R. R. Co. [1931] Ann. Rep. 455.

[51] So held in: Whitestown v. New York State Rys., 9 Dec. 432 (1920); Application of International Ry. Co., 4 Dec. 27 (1914).

[52] The Commission asserted jurisdiction: Application of Genesee Light & Power Co., 2 Dec. 443 (1910); Petition of Rosoff [1929] Ann. Rep. 261.

[53] Village of Horseheads v. Elmira Water, Light & R. R. Co., 9 Dec. 370 (1920).

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The amendment, extension and revision of statutes, raising questions of alteration and repeal of grants of power, complicate the work of administrative tribunals quite as much as they do the work of the judiciary. Excellent illustration of this can be found in the question whether the Public Service Commissions Law of 1907 gave the Commission power to alter street railway and gas and electric rates fixed by statute or municipal franchise. The statutory provisions were so complicated as to make it pointless to go into the question here. It is sufficient to say that the Commission inquired into its jurisdiction in at least fifteen decisions, and that more than thirty court decisions and two legislative enactments, all covering a course of twenty years, were necessary to bring the question to its present state of rest.[54]

The foregoing paragraphs should make it clear that a cavalier reading of the statute is oftentimes not sufficient to establish the reach of administrative authority. Yet in a government where public officers are expected to exercise regulatory powers of genuine importance and at the same time stay within the bounds of law, the question of jurisdiction must be decided

[54] This situation is discussed quite fully by Leon Leighton in his article, "Review of the Public Service Commission and the Transit Commission in the New York Courts" (1928) 3 *St. John's L. R.* 42, 55-76. Opinions in which the Commission reasoned its jurisdiction at some length are: Business Men's Assoc. v. Delaware & Hudson Co., 2 Dec. 78 (1909) [order affd. in People *ex rel.* Delaware & Hudson Co. v. Public Service Comm., 140 App. Div. 839 (3d Dept., 1910)]; Petition of Ulster & Delaware R. R. Co., 4 Dec. 535 (1915) [order reversed and jurisdiction of the Commission asserted in People *ex rel.* Ulster & Delaware R. R. Co. v. Public Service Comm., 171 App. Div. 607 (3d Dept., 1916), affd. 218 N. Y. 643]; Application of New York & North Shore Traction Co., 4 Dec. 587 (1915) [order annulled in People *ex rel.* New York & North Shore Traction Co. v. Public Service Comm., 175 App. Div. 869 (3d Dept., 1916)]; Rochester v. New York State Rys., 4 Dec. 393 (1915) [Commission's opinion sustained in Matter of Quinby v. Public Service Comm., 183 App. Div. 914 (3d Dept., 1918), reversed in 223 N. Y. 244]; Petition of Huntington R. R. Co., *supra*, note 35; Application of Municipal Gas Co. of Albany, 7 Dec. 126 (1918) [order affd. in People *ex rel.* Municipal Gas Co., 184 App. Div. 922 (3d Dept., 1918), affd. 224 N. Y. 156]; Petition of New York & Stamford Ry. Co., 9 Dec. 389 (1920) [order annulled in Matter of Village of Mamaroneck v. Public Service Comm., 208 App. Div. 330 (3d Dept., 1924)]; Petition of United Traction Co. [1921] Ann. Rep. 153; Petition of United Traction Co. [1926] Ann. Rep. 283. See also United Traction Co. v. Public Service Comm., 219 A. D. 95 (3d Dept., 1927).

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before (not after) the pronouncement of the order which is to control the activity of the business man. If the administrative officer is not to make his own decision as to the extent of his authority, a way must be found to supply him with instruction on that point. That instruction must come promptly, and from a source entitled to the confidence of both the administrative officer and the parties interested in the controversy. A satisfactory solution of so complicated a social problem is not to be found in the dogmatic statement that administrative bodies should be divested of their "judicial functions". A more constructive utilization of experience is needed. Some of the considerations which it seems to the writer ought to control in the solution of the problem are set forth at a later point in this article.[55]

2. *Law Determination: Non-Jurisdictional Questions*

The determination that the administrative official has jurisdiction to act in a particular case is likely to prove but the first of a series of inquiries into the law. Common law or statutes often specify the action which the administrative officer must take, and in all cases set limits to the range of his authority.[56] Where the requirements of the law are obvious, or issues of only slight moment are at stake, the administrative body may issue its orders without conscious concern for legal provisions. Cases are not unusual, however, in which the commission or officer is forced to make careful analysis of statute and judicial pronouncement.

Not infrequently statutes specifically instruct the administrative authority to make findings as to the requirements of the law. Thus the United States Securities and Exchange Commission is "authorized" to discipline stock exchanges, members of exchanges and issuers of securities "if the Commission finds" that one of these parties "has violated any provision of this title or of the rules and regulations thereunder."[57] The New York Public Service Commission, like that of several other states, is empowered to revoke or suspend the certificate

[55] *Cf.* second part of this article. [56] *Cf. infra*, pp. 412 *et seq.*

[57] 48 Statutes at Large 898, § 19a (1934).

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of convenience and necessity of motor carriers "for noncompliance with any condition prescribed by rule of the commission or for failure to comply with an order of the commission lawfully made with respect to the omnibus corporation or for violation of any provision of law." [58]

More often, however, the administrator's inquiry into the law is based on less specific statutory mandate; an honest caution to act in accordance with legal provisions prompts constant examination of statute and case law. Careful scrutiny of legal materials has marked the conduct of the New York Public Service Commission at every step in its control of utilities. There is often doubt as to the requisite or permissible procedure of the Commission. Thus the Commission has had to decide whether a formal hearing must be conducted in a particular case,[59] what parties are entitled to be heard,[60] what evidence may be admitted,[61] where the burden of proof lies,[62] whether a rehearing may or shall be ordered, and what evidence may be introduced on rehearing.[63]

In other cases the Commission has had to decide a wide variety of questions involving the legal status and legal rights of particular persons, corporations or types of utility. Thus question may arise as to whether particular tracks are public

[58] N. Y. Public Service Law (1933), § 63d, sub. 4. *Cf. ibid.*, § 49, subs. 1, 2, 3. *Cf.* also Colorado Compiled Laws, Supp. 1932, § 3000.19; Carroll's Kentucky Statutes Ann., 1930, § 2739j-13; Revised Statutes of Maine, 1930, ch. 66, § 5 (p. 1100); Compiled Laws of Michigan, 1929, § 11342; Laws of Mississippi, 1926, ch. 128, § 5 (p. 207); South Carolina Code of Laws, 1932, § 8518; Compiled Texas Statutes, 1928, art. 911a, § 10 (pp. 122-23); Code of Virginia, 1930, § 4097o (p. 1038); Wyoming Revised Statutes, 1931, § 72-529. For illustrative cases arising out of such statutory provisions, see *Re* Wright (Colo.), P. U. R. 1932D, 461; *Re* Kelso (Colo.), P. U. R. 1933D, 403.

[59] E. g., *Re* application of New York Telephone Co. [1921] Ann. Rep. 234.

[60] Petition of Consolidated Gas Co. [1928] Ann. Rep. 298, 307, 314-16, and 334 (two cases).

[61] E. g., Waterford v. Cohoes Power & Light Corp. [1926] Ann. Rep. 286, 289.

[62] E. g., Beecher-Lisle Telephone Co. v. New York Telephone Co., 4 Dec. 697 (1915); Malone v. Mountain Home Telephone Co., 5 Dec. 74 (1916); Petition of Consolidated Gas Co. [1928] Ann. Rep. 298, 308.

[63] E. g., Petition of Terminal Ry. of Buffalo, 1 Dec. 218 (1908); Employees of Halcomb Steel Co. v. Syracuse, Lake Shore & Northern R. R. Co., 4 Dec. 424 (1912).

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railways or merely private facilities of a manufacturing company,[64] whether a particular railroad bridge is open to public pedestrian traffic,[65] whether wholesalers of gas must serve all retailing firms which apply,[66] and so on.

In many instances the Commission's action is predicated on certain prior action of other bodies. Accordingly, question often arises as to whether this prior action has been executed in full compliance with the law. In spite of the fact that the judiciary has indicated that the Commission may properly make such inquiry,[67] the Commission's policy in such cases has not been entirely consistent. It refused to inquire whether a lighting district was legally created,[68] but did inquire whether the consent of stockholders to a bond issue was obtained in a proper manner.[69] Most cases of this sort involve questions as

[64] E. g., *Re* discontinuance of joint fares, 4 Dec. 97 (1914); Snyder, Fancher Co. v. Erie R. R. Co., 3 Dec. 200 (1914).

[65] Sheahan v. U. S. Railroad Administration, 9 Dec. 478 (1920).

[66] Attica Water, Gas & Elec. Co. v. Alden-Batavia Natural Gas Co., 3 Dec. 207 (1912).

For other interesting cases, see *Re* joint petition of Town of Cuba and County of Allegany, 9 Dec. 645 (1920) (authority of town board to petition for removal of grade railway crossing over a state highway); Fitzgibbons v. U. S. Railroad Administration, 8 Dec. 294 (1919), and Degnan v. U. S. Railroad Administration, 9 Dec. 68 (1920) (applicability of full crew law to certain railroads and trains); *Re* joint petition of Great South Bay Ferry Co. & F. Bidrim, 9 Dec. 320 (1920) (corporations organized under the Transportation Corporations Law may not operate a street railway); Colliers Light, Heat & Power Co. v. Oneonta Light & Power Co., 6 Dec. 54 (1917) (electric company must obtain certificate of convenience and necessity to furnish service, even though it makes no use of public streets).

[67] People *ex rel.* Bath & Hammondsport R. R. Co. v. Public Service Comm., 127 App. Div. 480, 112 N. Y. Supp. 133 (3d Dept., 1908), holding that Commission should find whether incorporation was completed by actual subscription and paying in of the minimum capital stock; Long Beach and Chateaugay cases cited *infra*, note 70. *Cf.* People *ex rel.* New York Central & Hudson R. R. Co. v. Public Service Comm., 195 N. Y. 157, 88 N. E. 261 (1909).

[68] Petition of Colliers Light, Heat & Power Co., 5 Dec. 90 (1916).

[69] Petition of Erie R. R. Co., 5 Dec. 108 (1916). In Petition of Binghamton Light, Heat & Power Co. [1930] Ann. Rep. 535, the Commission refused to reopen a case and reverse its order approving a transfer of property where the ground offered for the reversal was that not all the stockholders had been given the notice of intent to transfer which the charter required. *Cf.* Joint petition of New York, Chicago & St. Louis R. R. Co. and others [1925] Ann. Rep. 248.

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to whether consents or franchises of local governments are required, whether the proper type of franchise has been obtained, and whether the local consent was lawfully given. The Commission will always make its own determination as to whether local consent is required and has been obtained,[70] and apparently will always satisfy itself that the proper kind of consent or franchise has been secured.[71] On the question of regularity in the issuance of local consents, the Commission has been uncertain as to its proper rôle. It first refused to inquire whether the notice of the public hearing which preceded grant of a local consent was properly given,[72] then two months later went fully into charges of irregularity in the action of local authorities.[73] There appears to be no other case in which the Commission inquired into regularity in the issuance of franchises, though on one occasion the language of the opinion suggested that if a *prima facie* case for fraud had been made, the Commission would have satisfied itself as to the truth of the charge.[74] On at least two occasions subsequent to the cases discussed above, the Commission specifically refused to inquire into the process by which franchises were issued.[75]

[70] Held that the Commission is required to inquire whether local consent has been obtained: City of Long Beach v. Public Service Comm., 249 N. Y. 480, 164 N. E. 553 (1928); People *ex rel.* Village of Chateaugay v. Public Service Comm., 255 N. Y. 232, 174 N. E. 637 (1931). For representative Commission cases see: Fulton Light, Heat & Power Co. v. Oswego River Power Transmission Co., 3 Dec. 482 (1912); Port Jefferson Elec. Light & Power Co., 7 Dept. R. 186 (1916); Petition of Post Road Auto Co., 9 Dec. 216 (1920); *Petition of Hubbard*, 9 Dec. 516 (1920); *Petition of Rockland* Bus Lines [1929] Ann. Rep. 179. *Cf.* Petition of International Bus Corp. [1930] Ann. Rep. 589.

[71] Application of Troy Auto Car Co., 5 Dec. 396 (1916); Petition of Merchants' Community Bus Transit [1929] Ann. Rep. 291; Petition of Ithaca Ry. [1929] Ann. Rep. 417. *Cf.* Petition of Tostanowski [1928] Ann. Rep. 173.

[72] Petition of Gray, 4 Dec. 632, 636 (1915).

[73] *Re* joint petition of Silver Creek Elec. Co. & J. Kimmel, 4 Dec. 680, 686-87 (1915). The earlier case was not mentioned in this opinion.

[74] Petition of South Shore Gas Co., 5 Dec. 161 (1916). *Cf.* Petition of Eastern Greyhound Lines [1931] Ann. Rep. 500, 507-508; and Petition of Groton Elec. Power Corp., 6 Dec. 312 (1917).

[75] Petition of Becraft, 5 Dec. 51, 59-60 (1916); Petition of Hadley Light & Power Co., 9 Dec. 96, 99-102 (1920). In the latter case, one commissioner

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It may be said that the various questions of law determination discussed in the foregoing paragraphs were preliminary or incidental to the issuance by the Commission of definitive orders binding upon the parties before it. These represent only a minor part of the cases in which statute, court decision and common law understanding press for interpretation. Every final order of the Commission is based on a series of assumptions as to the legal rights and duties of the affected parties; in a great number of cases these legal questions are carefully weighed in the published opinions of the Commission. Illustrations can be found for every phase of utility control, from issuance of the certificate of convenience and necessity to the abandonment of service; only a few need be cited.

In at least two cases the Commission went back to John Marshall's discussion of the "necessary and proper" clause in *McCulloch* v. *Maryland* for guidance (or support) in giving a meaning to the phrase "convenience and necessity."[76] Petitions for approval of security issues have led to extensive consideration of whether securities may be issued for financing replacements to equipment,[77] and whether utility corporations may issue interest bearing paper as dividends to stockholders.[78] Efforts of the Commission to prevent foreign corporations obtaining control of New York utilities have precipitated several nice legal questions and at least one flight of soul-stirring oratory on the part of former Commissioner Van Santvord.[79]

Conflicts over utility service present a succession of legal questions. Does the statute require extension of service to the

dissented, arguing that the Commission should determine for itself the legality of issuance of the franchise.

[76] Petition of Troy Auto Car Co., 5 Dec. 396, 401-403; Petition of Aldrich [1922] Ann. Rep. 232, 238-39.

[77] Application of Niagara Light, Heat & Power Co., 2 Dec. 90 (1909); *Re* application of Binghamton Light, Heat & Power Co., 2 Dec. 171 (1909), 2 Dec. 566 (1910), and 5 Dec. 172 (1916) (three cases).

[78] Petition of Erie R. R. Co., 1 Dec. 115 (1907); *Re* application of Babylon Elec. Light Co., 1 Dec. 132 (1908).

[79] Petition of Lockport Gas & Elec. Co., 6 Dec. 181, 189-90 (1917); Petition of New York Elec. Co. [1928] Ann. Rep. 199.

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applicant?;[80] how is the cost of the extension to be distributed?;[81] what is the obligation of a railroad in respect to constructing and maintaining switches and side tracks, and spotting cars?;[82] and so on.

Rate cases, as would perhaps be expected, necessitate constant scrutiny of statute, common law understandings and judge-made policy. Allegations of discrimination in charges are likely to appear trivial to the disinterested observer; nevertheless they often present very difficult questions of law. The New York Commission has had to decide, for instance, whether

[80] Simpson v. Buffalo Gas Co., 2 Dec. 531 (1910); Lifshitz v. Orange Co. Pub. Service Corp., 9 Dec. 428 (1920); Stevenson v. Baldwinsville Light & Heat Co., 9 Dec. 583 (1920).

[81] Simpson v. Buffalo Gas Co., *supra*, note 80; Draney v. Central Hudson Gas & Elec. Co., 5 Dec. 334 (1916); Rogers v. Nassau & Suffolk Lighting Co., 9 Dec. 321 (1920); Lifshitz v. Orange Co. Pub. Service Corp., *supra*, note 80.

[82] Lancaster Machine & Knife Works v. Erie R. R. Co., 4 Dec. 111 (1914); Dundee Elec. Light Plant v. New York Central R. R. Co., 5 Dept. R. 357 (1915); Adams Lumber Co. v. Long Island R. R. Co. [1928] Ann. Rep. 167. Other cases involving service are: Comstock v. Municipal Gas Co., 4 Dec. 364 (1914) (obligation of electric company to furnish direct as well as alternating current); New York State Shippers Protective Assoc. v. New York Central R. R. Co., 2 Dec. 251 (1909); *Re* handling of bulk grain [1922] Ann. Rep. 169 (obligation of carrier to furnish grain doors, bulk heads, etc.); *Re* New York Telep. Co. [1931] Ann. Rep. 582 and 647 (two cases involving obligation of telephone company to furnish wires for transmission of entertainment program); Application of State Agricultural & Industrial School, 4 Dec. 219 (1914) (obligation of telephone company to furnish outside connection for a private telephone system); Trustees of Falconer v. Pennsylvania Gas Co., 7 Dec. 242 (1918); Hess v. Iroquois Natural Gas Co. [1921] Ann. Rep. 113 (must gas company facing failure of gas supply extend service to new applicants?); Agor v. Mahopac Falls R. R. Co., 2 Dec. 560 (1910), 3 Dec. 46 (1911), and 4 Dec. 617 (1915) (three cases); *Re* Cayuga Heights Line, 3 Dec. 442 (1912); Residents of North Creek v. Delaware & Hudson Co., 9 Dec. 693 (1920) (authority of Commission to order restoration of service); *Re* New York State Rys., 9 Dec. 178 (1920) (authority of Commission to order improvement of service of a company not earning a fair return); Residents of Fort Edward v. U. S. Railroad Administration, 9 Dec. 520 (1920) (obligation of railroad, under statute authorizing it to bridge a stream, to maintain channel in its original state of usefulness); *Re* liability of railroads [1926] Ann. Rep. 274 (supersedure of state statute by federal act *re* liability for loss and damage to property); Postal Teleg.-Cable Co. v. Western Union Teleg. Co., 8 Dec. 464 (1919) (credit policy of one telegraph company as discrimination against competitor).

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utilities are forbidden to charge lower rates in one community than in another;[83] whether charges fixed by joint rate agreements are excepted from the requirement that charges and tariffs be equal and non-discriminatory;[84] and whether statutory provision that special rates might be afforded certain classes of patrons requires that all members of an excepted class be given like treatment.[85] The determination of proper operating costs, as well as of value of plant and equipment, whether properly or not, has by judicial fiat been made a question of law. The Commission has consequently resorted to court decisions in deciding whether particular utility expenditures might be charged to operating account;[86] in deciding whether any, and how much, allowance should be made for going value;[87] and in determining the weight to be given reproduction cost, original investment and other indices of value.[88] Court decisions have likewise been of great service to the Commission in determining whether it must permit charges which will yield a fair return on each branch or unit of the service, or whether one branch or unit may be forced to draw

[83] Residents of Coxsackie v. Upper Hudson Elec. Co., 3 Dec. 353 (1912).

[84] Murray's Line v. Delaware & Hudson Co., 2 Dec. 127 (1909).

[85] *Re* complaint of Supervisors of Erie Co., 8 Dec. 54 (1919). Other interesting cases involving discrimination are: *Re* reduced rates to school children, 1 Dec. 10 (1907); Light Commissioners of Theresa v. Hydro-Elec. Power Co., 2 Dec. 692 (1911); Lockport v. International Ry. Co., 4 Dec. 11 (1913); *Re* joint complaint of Long Island Lighting Co. & Babylon R. R. Co., 7 Dec. 278 (1918); Petition of Niagara & Erie Power Co., 9 Dec. 325 (1920); Warsaw v. Warsaw Gas & Elec. Co., 9 Dec. 381 (1920).

[86] Petition of Elmira Water, Light & R. R. Co. [1922] Ann. Rep. 124, 141-42. *Cf.* Hoffman v. Elmira Water, Light & R. R. Co., 9 Dec. 233, 239-40 (1920).

[87] E. g., Whitehead v. Niagara Falls Gas & Elec. Light Co., 8 Dec. 233 (1919); Fuhrmann v. International Ry. Co., 8 Dec. 420 (1919); Petition of Long Island Lighting Co. [1921] Ann. Rep. 408; *Re* complaint of New York Telep. Co. [1926] Ann. Rep. 170; Utica v. Utica Gas & Elec. Co. [1931] Ann. Rep. 209, 235-40; Residents of Plattsburg v. Plattsburg Gas & Elec. Co. [1926] Ann. Rep. 292.

[88] E. g., Buffalo Gas Co. v. City of Buffalo, 3 Dec. 553, 631 *et seq.* (1913); Fuhrmann v. Cataract Power & Conduit Co., 3 Dec. 656, 679 *et seq.* (1913); Peekskill v. Peekskill Lighting & R. R. Co. [1922] Ann. Rep. 265, 270 *et seq.*; Wood v. Elmira Water, Light & R. R. Co. [1926] Ann. Rep. 372.

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upon the prosperity of other parts of the system.[89] Lastly, in passing upon the propriety of particular forms of rate schedule, the Commission has repeatedly delved into statute and judicial expression. Illustrations may be found in cases involving the lawfulness of service charges,[90] and of charges which vary with change in the cost of materials used by the utility.[91]

The foregoing pages should indicate what an examination of the reported decisions of the New York Public Service Commission abundantly demonstrates: that that tribunal has had constant recourse to statute and court decisions in the disposition of the cases before it. A conscientious effort to determine fairly the rights and duties of parties in dispute not infrequently necessitates scrutiny of other documents. Rights may depend on the interpretation given a corporate charter.[92] Contracts must be construed.[93] Service regulations of the utility are brought in question.[94] The previous orders and rules and regulations of the Commission are offered as authority for certain conduct.[95] Municipal ordinances and local government

[89] Petition of New York State Rys., 7 Dec. 302 (1918), and 9 Dec. 178 (1920) (two cases); Petition of New York & Stamford Ry. Co., 9 Dec. 389 (1920); Petition of Elmira Water, Light & R. R. Co. [1921] Ann. Rep. 186; Wood v. Elmira Water, Light & R. R. Co., *supra*, note 88. But *cf.* Purchasers of Gas v. Empire Gas & Fuel Co., 8 Dec. 510 (1919).

[90] Village of LeRoy v. Pavilion Natural Gas Co., 5 Dec. 186 (1916); Village of Frankfort v. Utica Gas & Elec. Co., 6 Dec. 168 (1917); Petition of Rochester Gas & Elec. Co., 9 Dec. 624 (1920); Little Falls v. Utica Gas & Elec. Co. [1921] Ann. Rep. 216; *Re* Brooklyn Union Gas Co. [1931] Ann. Rep. 469; *Re* Republic Light, Heat & Power Co. [1931] Ann. Rep. 552.

[91] Petition of Rochester Gas & Elec. Co., *supra*, note 90.

[92] See Erie R. R. and Binghamton Light & Power Co. cases cited *supra*, note 69.

[93] See Lancaster Machine & Knife Works, Dundee Elec. Light Plant, and Adams Lumber Co. cases cited *supra*, note 82, and Bishop & Poley v. Long Island R. R. Co., 4 Dec. 377 (1915).

[94] See, e. g., Village of LaSalle v. International Ry. Co., 3 Dec. 461 (1912); Martin v. Mohawk Gas Co., 4 Dec. 353 (1914); U. S. Housing Corp. v. Niagara Elec. Service Corp., 19 Dept. R. 197 (1919); Glen v. Mohawk Edison Co., 9 Dec. 119 (1920).

[95] Petition of Rockland Light & Power Co. [1921] Ann. Rep. 148; Petition of Lockport Light, Heat & Power Co. [1921] Ann. Rep. 177; *Re* programs of railroad crossings [1927] Ann. Rep. 195; *Re* contracts and agreements for elec. service [1931] Ann. Rep. 590; Residents of Albany v. Schenectady, 27 Dept. R. 124 (1921).

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franchises afford ground for bitter controversy. Which of two lawfully acquired franchises governs the operation of a company?[96] Are the provisions written on the back of a particular franchise a part of the contract, and if so is the "main line" there referred to the principal line which has been constructed or a more important line which the company plans later to build?[97] Questions of this sort have to be answered before parties can be instructed as to their proper conduct.

Issues of statutory construction present every degree of complexity. All too often common law principles have no pertinent application to the question at hand, plain words can be given a number of plain meanings, evidence of specific legislative intent is entirely lacking, and judicial interpretation has not yet been called forth. Witness the question as to whether replacements might be capitalized under section 55 of the Public Service Commissions Law.[98] Not infrequently parties rest their rights on the contention that national statutes have superseded state legislation.[99] Less frequently the Commission is urged to disregard statute on the ground of invalidity under state or national constitution. Apparently only once has the Commission refused to enforce a statute because convinced of its unconstitutionality.[100] On other occasions it has refused to

[96] Buck v. Judge, 8 Dec. 318 (1919).

[97] Lutheran Church v. Red Hook Light & Power Co., 3 Dec. 344 (1912). Other interesting questions of franchise interpretation are: Petition of Central Hudson Gas & Elec. Co. [1931] Ann. Rep. 354; *Re* Iroquois Natural Gas Co. [1921] Ann. Rep. 260; Wright v. New York & Long Island Traction Co., 3 Dec. 418 (1912); Edwards v. New York & Long Island Traction Co., 1 Dec. 127 (1908); Whitehouse v. New York & Long Island Traction Co., 3 Dec. 410 (1912); *Re* complaint of People's Natural Gas Co., 4 Dec. 648 (1915); Walton v. Walton People's Telep. Co., 6 Dec. 195 (1917); South Glens Falls v. United Gas, Elec. Light & Fuel Co., 6 Dec. 438 (1917); Petition of Addison Gas & Power Co., 7 Dec. 98 (1918); *Re* complaint of Hudson Valley Ry. Co., 9 Dec. 241 (1920).

[98] Cases cited *supra*, note 77.

[99] Lancaster Machine & Knife Works v. Erie R. R. Co., *supra*, note 82; Batavia Chamber of Commerce v. Lehigh Valley R. R. Co., 9 Dec. 558 (1920).

[100] Sheahan v. U. S. Railroad Administration, 9 Dec. 478 (1920). A statute which required a bridge to be opened to public use by pedestrians was believed to impair the obligation of a contract embodied in a charter. "In view, therefore, of the manifest invalidity of the statutes of 1891 and 1893, requiring

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question the controlling force of statutes, though not without revealing some uncertainty as to the proper rôle of an administrative tribunal. In a case where statutes were alleged to have fixed confiscatory rates, two of the five commissioners asserted the propriety of ignoring the statutes, and the majority opinion fell far short of firmly refuting their contention. Chairman Hill said for the majority:

> . . . we agree with the Commission in the First District, especially in view of the recent decision of the Court of Appeals in the *Quinby* case, that unless the unconstitutionality of the statute is clear it seems preferable that as an administrative tribunal exercising only *quasi*-judicial powers, the Commission shall in the first instance give effect to the obvious letter of the statute. And although for the reasons stated the constitutionality of the act of 1907 which fixes a maximum rate, as well as of the provision in section 72 which restricts the Commission to a rate "not exceeding that fixed by statute," may be considered doubtful, we are not prepared to pronounce them unconstitutional on the perfunctory presentation of the question which has been made.[101]

If administrative officials are to be given any legal authority over persons and property, and are to stay within legal bounds in its exercise, they must be reliably informed as to the law which governs their office. If they are not to serve as their own informants, setting the limits to their own power, a separate fountain of legal instruction must be provided. Since promptness is at a premium in the control of industrial affairs, such legal advice must be rendered without delay. And if public interest is not to be defeated the counsel must be capable of reading constructive social policy into vague statutory language. The question as to whether the administrative officer is

the establishment and maintenance of a foot path for pedestrians, coupled with the control of the Federal Government and the consequent lack of power in the State officials and courts in regard thereto, the application should be denied."

[101] *Re* application of Municipal Gas Co. of Albany, 7 Dec. 126, 130 (1918). Other cases in which the Commission refused to inquire into validity are: Petition of Niagara, Lockport & Ontario Power Co. [1924] Ann. Rep. 150; Petition of Rochester Gas & Elec. Corp. [1929] Ann. Rep. 362.

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probably the best interpreter of his legal authority is discussed at a later point.[102]

3. *Fact Finding*

In theory every determination of a fact by a public official involves a conscious or unconscious decision as to law. Since the duty or power of finding the fact is vested in him by law, the very process of ascertaining the fact involves at least an assumption as to what the law authorizes him to do. Thus a township trustee, instructed to find and report "the number of sheep killed by dogs", may have to decide whether the law requires him to include in his total a worried sheep which later dies of pneumonia, a frightened sheep which breaks its neck fleeing before the dog, and a lamb trampled to death in the stampede. A county clerk, charged to issue marriage licenses only to persons of less than a certain blood relationship, not already married, and of a certain age, acts upon a series of assumptions or conscious decisions as to what is marriage according to the law, how kinship is reckoned in legal contemplation, and whether at law one is twenty-one years of age the day after he has reached the halfway mark in his twenty-first year. Even the juror, instructed by the judge as to the law, decides a legal question when he ascribes in his own mind a meaning to the words which the judge has spoken.[103]

In practice many decisions are made without conscious concern for legal implications; the dispute centers in the occur-

[102] *Cf.* second part of this article.

[103] For a remarkably keen analysis of the relationship of questions of law and fact, see F. Green, "Mixed Questions of Law and Fact" (1901) 15 *Harvard L. R.* 271. *Cf.* J. W. Salmond, *Jurisprudence* (8th ed., London, 1930), ch. 3; J. B. Thayer, *A Preliminary Treatise on Evidence at the Common Law* (Boston, 1898), ch. 5; J. Dickinson, *op. cit., supra,* note 2, ch. 11; N. Isaacs, "The Law and the Facts" (1922) 22 *Columbia L. R.* 1. It must be understood that the distinctions between questions for the judge and questions for the jury only roughly correspond with the distinctions between questions of law and questions of fact. See any of the works just cited. The same must be said concerning the distinctions between so-called "questions of law" reviewable by a court and so-called "questions of fact" on which the administrative officer is final. See Dickinson, *loc. cit.*, and "Cromwell v. Benson: Judicial Review of Administrative Determinations of Questions of 'Constitutional Fact'" (1932) 80 *Pennsylvania L. R.* 1055.

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rence of events or the existence of objects or attributes which can be objectively observed. The issue in an assessment of personal property for taxation is likely to be: how many tons of hay are in the barn?—not, is hay assessable under the statute?; how much per ton should this hay be listed at in view of its quality compared with that of other hay assessed?—not, is value, under the law of taxation, the maximum which the most eager buyer would offer or the least amount which the owner would take?

Nevertheless, these legal questions have a surprising tendency to obtrude in controversies essentially concerned with the determination of facts. Administrative tribunals are doubtless more likely to print decisions which involve issues of law than those which are confined to fact determination, but it is worthy of note that of more than a thousand published opinions of the New York Public Service Commission, scarcely a score are exclusively concerned with the objective determination of facts. In a dispute as to the correctness of a telephone charge, the point in controversy was the time duration of certain long distance conversations—what one may call a simple issue of fact.[104] But where the issue was as to whether an electric company had exercised its franchise prior to July 1, 1907, the Commission had not only to find just what action the company had taken (question of fact) but was forced to consider whether this conduct constituted exercise of the franchise (question of law).[105]

The situation seems not to be essentially different with a great many other administrative tribunals. Every decision to issue or not to issue a patent is based upon the commissioner's conclusion as to whether the applicant "is justly entitled to a patent under the law."[106] Every cease and desist order of the Federal Trade Commission is predicated upon an assumption as to what business conduct is outlawed. One can scarcely imagine a petition for registration of securities under the fed-

[104] Friedman v. Burleson, 20 Dept. R. 140 (1919).

[105] Oswegatchie Light & Power Co. v. Northern Power Co., 1 Dec. 350 (1908).

[106] U. S. Code, Title 35, § 36.

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eral act which might not be denied under a particular interpretation of the statute. The writer hazards the guess that the daily routine of these tribunals presents a very high proportion of cases in which alternative interpretations of the law have to be consciously threshed out.[107]

One comes, consequently, to see little promise in the proposal that the administrative officer should be permitted to decide questions of fact only, leaving to other hands the determination of issues of law. If, as suggested above, the legal question is present or latent in every finding of fact, the law-adviser would have to be constantly available for consultation. It would, in many instances, be a lesser evil to let the administrative official decide the whole question than to worry out a differentiation of the factual from the legal aspects. The history of efforts to confine the jury to questions of fact should suggest the difficulty if not the futility of pursuing a similar policy in the limitation of administrative powers.[108]

4. *Formulation of Public Policy*

It would be erroneous to assume that all administrative pronouncements are limited to the determination of facts or the declaration of existing law. A basic part of the work of many administrative tribunals is the formulation of policy where statute is silent. Fully a score of statutory grants of power to the New York Public Service Commission can be said to indicate in no way the policy which the Commission is to pursue.

The Public Service Law (section 49, sub. 4) gives the Commission jurisdiction to order, under certain circumstances, physical connections between carriers by rail and carriers by water, and provides that the Commission shall "have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may,

[107] *Cf.* R. S. Smethurst, "Effect of Administrative Interpretation on the Powers of the National Labor Relations Board" (1935) 3 *George Washington L. R.* 141; H. L. McClintock, "The Administrative Determination of Public Land Controversies" (1925) 9 *Minnesota L. R.* 638, 655; Remarks of C. N. Goodwin in 59 *Rep. Am. Bar Assoc.* (1934), 149 *et seq.*; E. Wiltshire, "The Industrial Commission of Virginia" (1923) 10 *Virginia L. R.* 37, 55; R. A. Brown, *op. cit., supra,* note 11.

[108] *Cf.* second part of this article.

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in either the construction or operation of such tracks, determine what sum shall be paid to or by either carrier". The same section also provides that in case the Commission "shall be of the opinion" that through cars for the transportation of property "should be operated" over two or more railroads or street railroads, it may order interchange service and declare the "terms and conditions upon which such cars shall be received and transported." Furthermore, the Commission, if required by the circumstances, shall determine "the proportion of such expense to which each common carrier or corporation affected thereby shall be entitled and the manner in which any sums of money to which any common carrier or corporation is entitled shall be paid and secured." In case there is no existing connection making possible the interchange service found to be desirable, the Commission may order the construction of "such switch or other connections or interchange tracks as may be necessary", and it may "determine as to the division of the expense of the maintenance and operation thereof." Section 96 of the Railroad Law provides that in cases where a steam railroad is constructed so as to cross any other railroad, or any street railroad is constructed to cross a steam railroad, such crossing shall be above, below or at grade, as the Commission shall determine, and the "commission shall in such determination fix the proportion of expense of such crossing to be paid by each railroad." [109]

No amount of inquiry into facts and law will guide the Commission to a decision in many cases arising under these provisions. These sections carry no statement whatever as to the rules which shall govern the Commission in its action, and by no reasonable stretch of the imagination can it be said that they enact a body of understandings incorporated in other statutes or in the common law.[110] A decision to apportion the

[109] For other provisions granting power without instruction as to its exercise, see N. Y. Public Service Law, §§ 49 sub. 11, 50-b, 51-a, 63-f, 89 sub. 4, 99 sub. 2, 113; and N. Y. Railroad Law, §§ 55, 56, 94 sub. 5, 98, 101, 102, 103, 148, 149, 150, 156, 158, 162, 173-g.

[110] It seems to be the opinion of Mr. L. A. Sigler in a recent article, "The Problem of Apparently Unguided Administrative Discretion" (1934) 19 *St. Louis L. R.* 261, 263, that statutes which fail to indicate the limits to adminis-

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costs of a railroad interlocker according to the volume of traffic of the respective companies will be arrived at by administrative fiat, not by a process of finding the law.

At least fifty statutory provisions for utility control in New York confer authority on the Public Service Commission in language which purports to announce a directing policy but which actually imposes only the most embryonic sort of rule

trative power are unconstitutional as attempting improper delegations of power. "The existence of an absolutely unqualified power over private interests in a governmental agency", he says, "is inconceivable in a constitutional, or limited, form of government such as the American. An unqualified power is an arbitrary power; it is an attribute of sovereignty. The theory of the American constitution does not admit of the existence of such a power in any body other than the one which has the power to change the constitution, theory and all. That body is the 'people'. It is elementary that neither the national nor the state legislatures possess an unqualified power. It is equally clear that the legislatures could confer no such power. Any attempt to do so would be futile."

If this means that administrative officials cannot be put above the constitution, the statement will hardly be questioned. If it means that statutes which attempt to delegate power without specifying the limits to its exercise are futile, it ignores the facts of government. Under sections 54, 63, 70, 83, 89-h, and 100 of the New York Public Service Law requiring commission consent to purchase, sale, lease, consolidation, merger, and contracts to operate utilities, petitions involving hundreds of millions of dollars of property have been denied. See, e. g., Application of New York Central & Hudson River R. R., 3 Dec. 261 (1912); Petition of Consolidated Gas Co. [1928] Ann. Rep. 298. Until 1930 there was in the statute no discernible guide for commission action. In 1930 these sections were amended to provide that all orders as to petitions for acquisition of capital stock should be made in accordance with the public interest. No such limitation was imposed upon the Commission in acting upon petitions seeking permission to acquire franchises or property, or to operate systems or plants under lease or other forms of contract.

What the United States Supreme Court would hold if a statute conferring undefined power were questioned on grounds of due process is, of course, speculative. Mr. Sigler is of the opinion that the statute should be held valid, judicial veto being reserved for instances of actual exercise of arbitrary power. *Op. cit.*, 291 *et seq.* But in Douglas v. Noble, 261 U. S. 165, 168, 67 L. Ed. 590, 43 Sup. Ct. 303 (1923), Mr. Justice Brandeis said: "If it purported to confer arbitrary discretion to withhold a license, or to impose conditions which have no relation to the applicant's qualifications to practice dentistry, the statute would, of course, violate the due process clause of the Fourteenth Amendment." In this case the Supreme Court followed the state court's holding that the statute did not confer arbitrary power. Mr. Justice Brandeis did not indicate just what positive statutory language or absence of language would "purport" to confer arbitrary discretion. The writer strongly

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for the guidance of the regulatory tribunal. When the Commission shall be of opinion that the rates, fares or charges of any railroad are "unjust, unreasonable, unjustly discriminatory or unduly preferential, . . . or that the maximum rates, fares or charges chargeable" by a railroad "are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable", the Commission shall "determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed."[111] If, "in the judgment of the commission", any railroad or street railroad does not maintain

suspects that complete failure to indicate positively a limitation on discretion would carry that import to a majority of the Justices. *Cf.* Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220, 6 Sup. Ct. 1064 (1886).

Grants of discretion must also satisfy the courts as to compliance with the constitutional provisions concerning the separation of powers and non-delegation of powers. For the United States the leading cases are Panama Refining Co. v. Ryan, 293 U. S. 388, 55 Sup. Ct. 241 (1935); and Schechter Poultry Corp. v. U. S., 55 Sup. Ct. 837 (1935). These would seem to point to the invalidating of any national statutes conferring grants of such undefined powers as are described above. The doctrines of separation and non-delegation of powers in state constitutional law differ sharply from state to state, ranging perhaps from the great freedom in admixture and delegation allowed in such states as Alabama [Fox v. McDonald, 101 Ala. 51, 13 So. 416 (1893)], and Wisconsin [State *ex rel.* Wisconsin Inspection Bureau v. Whitman, 196 Wis. 472, 220 N. W. 929 (1928)], to the rigid limitation which is imposed in Illinois [People *ex rel.* Gamber v. Sholem, 294 Ill. 204, 128 N. E. 377 (1920)]. Discussions which take no account of these differences in state constitutional policy are of questionable value. The attitude of the New York Court of Appeals concerning the validity of the sections of the Public Service and Railroad Laws listed above (note 109) cannot safely be predicted. The present writer in 1930 recommended the inclusion in each of these sections of some palliating phrase such as "public interest". The only fruit of this suggestion was the insertion in the provision concerning acquiring of stock, that the Commission should approve the acquisition only when it "shall have been shown that such acquisition is in the public interest." Pertinent New York cases are: People *ex rel.* Lieberman v. Vandecarr, 175 N. Y. 440, 67 N. E. 913 (1903); People v. Klinck Packing Co., 214 N. Y. 121, 108 N. E. 278 (1915); Stern v. Metropolitan Life Ins. Co., 169 App. Div. 217, 154 N. Y. S. 472 (1st Dept., 1915), affd. 217 N. Y. 626, 111 N. E. 1101 (1916); People *ex rel.* Doyle v. Atwell, 232 N. Y. 96, 133 N. E. 364 (1921); Brown v. University of State of New York, 242 A. D. 85, 273 N. Y. S. 809 (3d Dept., 1934), appeal denied 265 N. Y. 290, 192 N. E. 416 (1934).

[111] N. Y. Public Service Law, § 49, sub. 1.

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cars and motive power "reasonably to accommodate the traffic", or does not run its trains with "sufficient frequency or at a reasonable or proper time having regard to safety", or does not operate its trains upon "a reasonable time schedule for the run", the Commission may make orders for the improvement of the service.[112] No railroad, gas, electric or steam heating corporation shall begin to do business until the Public Service Commission shall decide that its institution is "necessary or convenient for the public service."[113] Utilities may acquire the stock of other similar utilities only when it "shall have been shown that such acquisition is in the public interest."[114] Such expressions are all things to all men. If they come to have accepted meanings, it is because judicial pronouncement or administrative custom has supplied the policy which the legislature failed to announce.

A very considerable part of administrative control over industry and professions is exercised under such sweeping grants of power as the foregoing. "Reasonable", "public interest", "good cause", "reputable" are common rather than exceptional in legislation providing for public control of persons and property. No theorizing as to the proper functions of administrative tribunals can be adequate unless it takes into account the results of our experiments in constructing public policy through administrative decisions. The contribution of the judge to the law of torts, of contracts, of property is generally appreciated; we are currently depending upon administrative tribunals to supply us with a case law of public control of business. In many fields of control, the business man can look to administrative precedents for guidance in molding his future conduct. For the most part we have not even a beginning notion of the character or the extent of this new law. The contribution of the New York Public Service Commission has been outlined in a previous article by this writer. It is sufficient here to quote from the concluding paragraphs of that study.

[112] *Ibid.*, § 51.

[113] *Ibid.*, §§ 53, 68, 81.

[114] *Ibid.*, §§ 54, 70, 83, 100.

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. . . some evidence of the narrowing of discretion can be seen in every important field of the Commission's jurisdiction: the grant or refusal of certificates of convenience and necessity, control of capitalization, supervision over transfers of ownership and management of properties, regulation of service, rate making, and control of railroad-highway crossings.

The case law of the Commission, like legislative enactment and judge-made law, ranges from the one extreme of specific formula to the other extreme of general norm or guiding principle. A statute may provide definitely that the price of illuminating gas, delivered on the premises of the consumer in New York City, shall not exceed one dollar per 1000 cubic feet; or it may state that the price of gas "shall be just and reasonable" and that "every unjust or unreasonable charge made or demanded for gas" is prohibited. Similarly, the case law of the New York Public Service Commission ranges from such definite assertions as the one that overhead highway bridges shall provide a twenty-one foot clearance for the railroad, to the general principle that the interests of established enterprises will be given weight in determining whether or not the public convenience and necessity requires additional service.

The pages of this article have recorded few cases of definite formulae pronounced by the Commission; most of the Commission's law making effort has resulted in the announcement of general standards.[115] *

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[115] C. S. Hyneman, "The Case Law of the New York Public Service Commission" (1934) 34 *Columbia L. R.* 67, 104-105. On the usefulness of the opinions of other administrative bodies as a guide in business practice, see G. C. Henderson, *The Federal Trade Commission* (New Haven, 1924), 335-36.

* To be concluded in the next number of this journal.—ED.

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THE BUREAUS OF THE FRENCH CONSTITUENT ASSEMBLY OF 1789

An Early Experiment in the Group-Conference Method

EVERY revolution brings to the fore men lacking in practical experience in government. For that very reason their attempts at governing, failures though they may be at the time, are often of unsurpassable value as sociological experiments. The French Revolution was exceptionally rich in such bold innovation. Among the experiments made by its untried leaders was one in what is now commonly known as the group-conference method, a mode of procedure in representative assemblies widely discussed and studied during the past twenty years.[1] It took the form of a system of so-called bureaus, first in the Assembly of Representatives of the Third Estate, then in its successor, the Constituent Assembly of 1789.

Tantalizingly little information is to be had on the actual conduct of the discussions in the bureaus. At the time, they attracted little attention. They existed as conference groups for only four months, after which their place was taken by standing committees. The anonymity of the discussions made, no doubt, for greater freedom of expression, but was probably one of the reasons why no minutes were kept; the historian is thereby the loser. There is little reference to the bureaus in the correspondence of the time. The greater questions of liberty and equality, the struggle between the court and the nation, fill the pages of letters and memoirs.

There are, however, in the records of the Assemblies and in the newspaper accounts of their meetings many references to the work of the bureaus. From these sources there can be gleaned a fairly clear picture of their origin and functioning, of the part they played in the life of the Assemblies, of the reasons for their decline and disappearance, and more impor-

[1] For a description of the process, see Harrison Elliott, *Process of Group Thinking*. The underlying philosophy may be found in Woodrow Wilson, *The New Freedom;* Mary Follett, *Creative Experience* and *The New State;* Hugo Krabbe, *Law in the Modern State*, especially the translator's introduction.

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tant still, of the judgment of members of the Assemblies as to their values and defects.[2] It is hoped that the picture of these early conference groups, presented without comment, will not only throw new light on the workings of the first Revolutionary Assemblies, but provide interesting if not valuable lessons for students of the spirit and technique of democracy.

I

In the spring of 1789, as is well known, delegates from the three orders—Clergy, Nobility and Third Estate—came together from all parts of France to devise means of meeting a national crisis. The orders met separately at first, and it was in the Assembly of the Representatives of the Third Estate that the bureaus were first used. The Assembly consisted of about 600 members, unacquainted with each other, without party organization, inexperienced in parliamentary methods, suspicious of the procedure used in such assemblies as they knew.

For the first weeks the meetings were unorganized and no actual business was done. But on May 7 the Third Estate decided, without organizing definitely, to negotiate with the other orders with the object of forming a single assembly. For two days the deputies spoke at random about what to do next, without coming to any conclusions. On May 8 the Dean of the Assembly proposed the adoption of rules of procedure, and one of the deputies, Rewbell, called for a regulation such that "we may collect the votes, to determine legally the opinions of this Assembly." Others put the question on a broader basis and demanded that "some means be sought for establishing order and regularity in such a numerous assembly." Mounier moved to "nominate a person in each *gouvernement,* to act for a week, for the purpose of meeting with the dean to put order into the conferences, to count the votes, to get information on the majority of opinions on all the proposals which might be made for accelerating the union of the Orders in the hall of

[2] Although it is possible that further materials bearing on the bureaus may come to light, the writer believes that the present description will stand substantially unchanged.

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the Estates-General, and to take note of all which might be determined provisionally." [3]

Going back to a precedent from the Estates-General of 1614, but avoiding the smaller divisions of that time by provinces as too likely to represent sectional interests, the Assembly decided that after dinner it would meet by *gouvernements* or other large divisions of the country, some groups in the rooms set aside for the work of the members, others in the private apartments of deputies. It was foreseen already, reports one newspaper, that the Assembly, once constituted, "might want, to hasten its action, to divide itself into several bureaus." [4] No action, however, was taken.

By May 25 even Mirabeau, who had previously joined in opposing the adoption of permanent rules, spoke in favor of a set of temporary rules by means of which a remedy could be applied to the disorder and the lengthiness of the discussions. He protested:

> God knows that I do not want to wound the self esteem of anyone, and that I am not upset by our somewhat noisy debates, which, up to now, have been a better sign of our zeal and our firm will to be free than the most passive tranquillity would have been. But liberty presupposes discipline, and since every moment can make necessary acts whose consequences cannot be foreseen nor their importance exaggerated, we must, to acquit ourselves of our duties, and even for our individual safety, adopt a method of debating and of voting which will incontestably give the result of the views and opinions of all.

Mirabeau evidently expressed a clearly felt need, for by a vote of 436 to 11 a committee was named to prepare temporary rules of procedure.[5]

[3] *Point du Jour*, Paris, 1789-91, 815 nos. in 19 vols., edited by Barère. Vol. I, p. 80, May 9, 1789 (Session of May 8). Also, Francisque Mège, *Gaultier de Biauzat, député du Tiers-État aux États-Généraux de 1789; sa vie et sa correspondance* (Paris, 1890), 2 vols. bound in 1. Vol. I, p. 45, letter of May 8, 1789.

[4] *Journal des États-Généraux*, Paris, 1789–1791, 35 vols., edited by Le Hodey de Saultchevreuil. Vol. I, pp. 16-17, May 8, 1789.

[5] *Point du Jour*, vol. I, p. 154, May 25, 1789. Gaultier de Biauzat (Mège, *op. cit.*, vol. I, p. 82) gives the figures as 438 to 11.

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The committee reported on June 6 the draft of a set of rules. It was at first proposed that the rules be read before the Assembly, "but the examination of them was sent to twenty bureaus formed by dividing the members of each deputation into different committees, composed each of thirty persons, and fixing their meeting places by lot." [6] The next morning was spent in discussion of the project in these bureaus.[7]

The most important part of the proposed rules had to do with the method of making motions, and of voting on them. Twenty groups were to be formed, composed without regard to geographical representation—an effort to break down the old provincial feelings. The groups were to be made up from an alphabetical list of the deputies, the first group to include the first deputy on the list, the thirty-first, etc., the second group the second deputy, the thirty-second, etc. Membership in the groups was to be changed every two weeks—an attempt to prevent the formation of cliques. The whole history of the Revolution as a struggle between the theory of absolute equality and of concentration of power is summed up in this decision. The Assembles did away with the old "ministerial despotism" but could not avoid organization, at first in the bureaus, later in the committees and the parties.

The function of the groups, which were called bureaus, was outlined in detail. Every motion must be presented to the secretariat of the Assembly, signed by its author. The secretariat could either accept or reject it. If accepted, the motion would be read to the Assembly and, if supported by more than four deputies, communicated to the bureaus, which would vote separately and report back the number of votes for acceptance or rejection. When the motion came before the Assembly for a second discussion, each bureau would have a speaker to debate in its name, and no others would be allowed to speak. The names of the persons to speak for and those to speak against the motion must be presented beforehand to the president of the Assembly. Final voting was to take place in the general

[6] *Point du Jour*, vol. I, p. 296, June 6, 1789.

[7] Adrien Duquesnoy, *Journal sur l'assemblée constituante, 3 mai 1789—3 avril 1790* (Paris, 1894), 2 vols. Vol. I, p. 78, June 7, 1789.

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Assembly, by rising vote, or by the collection of ballots by tellers.[8]

A lively discussion arose over the proposed bureaus. It was claimed that the nine small rooms available would not suffice for twenty bureaus. This practical difficulty was met by the argument that either fewer bureaus could be formed, or some bureaus could meet in different parts of the main hall. "We have already had", said one deputy, "the example of the Commons assembling in the hall by *gouvernements,* and the noise did not at all disturb this arrangement." Another and more serious objection was that "a person who had confidence in another would be prevented by these artificial divisions from getting the benefit of his advice, since a good suggestion would be lost in a decision by thirty persons." To this the answer was that under the present system not more than fifty speakers in all had taken part in the debates. Besides, it was added, after the question had been discussed in the smaller meetings, everyone would still be free to speak again in the general Assembly. On the other hand, far from depriving the members of the Assembly of the benefit to be derived from a variety of opinions, the bureaus would rather increase it. Often, it was held, a person who remains silent, either from "lack of a voice and lungs strong enough to make himself heard by six hundred persons", or because he had not had experience in speech-making, would offer his views with more "ease of mind" in a meeting of thirty persons.

Malouet, who supported the plan of bureaus, wished, however, to make of them something in the nature of standing committees by giving "to each Bureau a special subject to discuss, to one taxes, to another commerce, to this one justice, to that agriculture, and so on." His suggestion fell so wide of the mark that no one seconded him.[9]

It was finally decided to divide the Assembly into bureaus, and to determine their functions later. Mirabeau expressed the tentative nature of the decision: "However imperfect these

[8] *Journal des États-Généraux*, vol. I, pp. 37-39, June 6, 1789.

[9] *Ibid.*, vol. I, pp. 41-43, 50, June 6, 1789. *Point du Jour*, vol. I, pp. 296-297, June 6, 1789.

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provisional rules may be, however vicious may be the meetings by Bureaus, in spite of all the changes demanded it has not been possible to do better in a moment when as yet we have only a feeble knowledge of the tactics of political assemblies and feel the urgent need of some discipline." [10]

The number of members of each bureau was set at thirty. When Bailly tried to have the number of bureaus reduced to fit the ten rooms available, Target pointed out that this would mean sixty members to a bureau, and added that sixty could not deliberate much more easily than the six hundred of the whole Assembly. It was further decided that meetings of the bureaus be held every evening.[11]

On June 13 the appointment of the members of the bureaus was approved. Already it could be foreseen from which quarter the attack on the bureaus would come. "The list", reported Duquesnoy, "had been made, but the Bretons, who are never of one mind with the rest, stood up vigorously against the measure, whose execution they wanted to prevent." [12] But in spite of them, it was confirmed. The deputies of the Third Estate then decided to proceed with the verification of credentials, and the bureaus were given the duty of examining them.[13] They met for the purpose the same afternoon and reported that evening and the next day.[14]

II

On June 17, some members of the Clergy and the Nobility having joined the Third Estate, the deputies constituted themselves the Constituent Assembly, and when the others had followed on June 29 a complete reorganization became necessary.

The whole Assembly as now constituted numbered some twelve hundred members. This altogether too unwieldy number was due partly to the prevalent theory of the most direct

[10] *Point du Jour*, vol. I, p. 298, June 7, 1789 (Session of June 6).

[11] *Journal des États-Généraux*, vol. I, p. 50, June 8, 1789.

[12] Duquesnoy, *Journal*, vol. I, p. 80, June 9, 1789.

[13] *Procès-verbal de l'Assemblée Nationale*, Paris, 1789-90, 75 vols. Vol. I, p. 48, June 13, 1789.

[14] *Ibid.*, pp. 55 *et seq.* Also Mège, *op. cit.*, vol. II, Letter No. XXI, p. 112.

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representation possible, and partly to the accident of forming a single assembly out of the three estates which had hitherto met as separate units. One of the first acts of the new Assembly was to set up on July 1 bureaus like those of its predecessor.

The number of bureaus was set at thirty, made up of forty members each; the members were to be appointed by following the printed list of election districts (*baillages*) by alphabetical order, the first on the list, the thirty-first, the sixty-first, etc. entering the first bureau, the second, thirty-second, sixty-second, etc. entering the second bureau, and so on.[15]

It is of interest that a proposal to make up the bureaus of members of the three orders proportionately was rejected. "The method followed", wrote an enthusiastic deputy and journalist, Barère, shortly after, "cannot but produce the best effects. . . . Superficial observers will see, perhaps, in this method of forming the Bureaus only an ordinary manipulation or a mechanical process, but true statesmen will easily perceive the germ of the measures of reconstruction which are to substitute a great nation for provinces separated and foreign to one another, and replace feudal France by France free and enlightened." [16]

As to the functions of the bureaus it was proposed that they "shall have for their only aim to inform themselves and to hold consultations on the matters which may be presented to them, and which shall then be reported to the Constituent Assembly, to be discussed and decided there; that these Bureaus shall be changed and reorganized each month." [17] In other words, their function was to be one of exchange of views, not of final action, which was reserved to the Assembly as a whole. "It is to be noted", reports a newspaper of the time, "that . . ., to avoid the spirit of clique and of bureaucracy, there are to be made neither findings, nor the collection of votes, the Bureaus having for their object only the facilitation of information and the preparation of materials." [18]

[15] *Procès-verbal*, vol. I, pp. 20-21, July 1, 1789.

[16] *Point du Jour*, vol. III, p. 89, July 3, 1789 (Session of July 2).

[17] *Procès-verbal*, vol. I, pp. 20-21, July 1, 1789.

[18] *Point du Jour*, vol. III, p. 87, July 2, 1789 (Session of July 1).

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A rule adopted on the next day assigned to the bureaus the additional duty of electing the president and secretaries of the Assembly: "A President shall be elected every two weeks. . . . Votes shall be taken in the thirty Bureaus, which shall always be called for the afternoon." [19] As will be seen later, of all the functions of the bureaus, this of collecting votes was the only one finally left to them.

Almost immediately occasion arose to make use of the original function of the bureaus, that of discussing matters referred to them. On the morning of July 3 the claims of the deputies of Santo Domingo for admission to the Constituent Assembly were referred to the bureaus to be discussed that afternoon and reported back on the next morning for vote in the general Assembly. The minutes of the Assembly do not show whether the reports were made by bureaus or not. Apparently the question was debated in the Assembly by individuals speaking for themselves only.[20] One newspaper reports, however, that "the discussion which took place Friday in the Bureaus resulted yesterday morning in several remarks by MM. . . ." (there follows a list of names).[21]

On July 4 there was brought before the Assembly a question of great importance, the proposal of the Committee on Food Supplies (*comité des subsistances*) regarding the free circulation of grains and other emergency measures. "There can be no doubt as to the views of the Constituent Assembly on this point", reported the *Point du Jour,* "but they are not yet sufficiently clarified. It has seemed best to refer the question to the Bureaus, for discussion on the various means proposed by the Committee." [22] The instructions given the bureaus were "to deliberate in conference form." [23] The whole of that Saturday evening and a large part of the following Monday morning were devoted to these discussions in the bureaus. Late Monday morning the debate in the Assembly was opened with

[19] *Procès-verbal,* vol. I, pp. 20-21, July 1, 1789.

[20] *Ibid.,* vol. I, pp. 1-2, July 3, 1789; p. 4, July 4, 1789.

[21] *Point du Jour,* vol. III, p. 106, July 5, 1789 (Session of July 4).

[22] *Ibid.,* vol. II, p. 110, July 5, 1789 (Session of July 4).

[23] *Procès-verbal,* vol. I, pp. 5-6, July 4, 1789.

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reports by speakers "who made known the considerations presented in the various Bureaus."[24] Six bureaus thus reported, but either the method was too artificial, or these six reports had covered the field, for the discussion then became general and led to a vote without hearing from the other groups.[25]

Several of the reports merely gave in summary the points of view expressed in the bureaus regarding the motion prepared by the committee. Others presented complete new resolutions worked out in their discussions.[26] Duquesnoy, an apostle of action, was frankly disgusted by these "miserable reports". It looked, he wrote, "as if we were going to have to debate on thirty different propositions."[27] Camus, a great stickler for rules, remarked in regard to these resolutions "that they are contrary to the regulations, that in this form all discussion in the Constituent Assembly has been prevented, that in place of listening to and getting light from the opinions of all the members of the Assembly, one is reduced to hearing and to considering only the opinions of the Bureaus, that, finally, this new régime is contrary to the rules of procedure and divides the Assembly into thirty deliberating confederations."[28] The President replied "that the proposed resolutions are to be looked upon as motions only, and that no one is deprived of the right of speaking." However, either on account of Camus' criticism or because speakers felt themselves artificially limited, this seems to have been one of the last occasions on which the speeches were made chiefly in the name of the bureaus. In a few cases the bureaus did make joint reports, but in general they became opportunities for the exchange of views, after which each deputy spoke for himself.

When it came to the great work of drafting the Constitution, the Assembly considered carefully the rôle of the bureaus. A committeee had been appointed for drawing up a plan of procedure; on July 9 Mounier read its report. So clearly did he

[24] *Ibid.*, p. 3, July 6, 1789.

[25] *Point du Jour*, vol. III, p. 125, July 8, 1789 (Session of July 7).

[26] *Journal des États-Généraux*, vol. I, pp. 365-371, July 6, 1789.

[27] Duquesnoy, *Journal*, vol. I, p. 165, July 6, 1789.

[28] *Journal des États-Généraux*, vol. I, pp. 372-373, July 6, 1789.

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express the philosophy of the bureaus, and a method of integrating their work with that of the Assembly as a whole, that he is worth quoting at some length:

> At this point the Committee must present its views on the direction of the labors of the Assembly relative to the Constitution. This subject is too important for us to fail to unite all the enlightenment possible. It would be infinitely dangerous to confide to a committee the task of drafting a plan for the Constitution, and to have it judged then in a few sessions; the fate of twenty-five millions of men must not thus be put to the risk of too hurried consideration. It would be more in accord with prudence to have all the articles of the Constitution discussed in all the Bureaus at once, to appoint a committee of correspondence which would meet at certain hours to compare the opinions which would appear to prevail in the various Bureaus, and which would try, by this means, to prepare a certain uniformity of principles. . . . But, in order that no one may think us inactive while we are pressing forward the most important matters, and in order to facilitate for all the members of the Assembly the means of enlightening one another, three general sessions would be held each week, in which would be discussed in public the subjects already discussed in the Bureaus. By this procedure we would combine several advantages, that of conforming to principles, and that of profiting from the enlightenment of those who are waiting for new instructions before voting in the Assembly.[29]

By "conforming to principles" Mounier meant the holding of debates in public, "under the eyes of the Nation" as the phrase was. "Those who are waiting for new instructions" were the deputies who had limited mandates and could not act until they received wider authority from their constituents. The committee's proposal thus outlined by Mounier underwent sharp criticism on the part of those who felt that a small committee or even a single individual would be able to do more efficiently the work of drafting a Constitution. A few days later Mounier was again forced to take the floor. "Shall there be established", he asked, "a Committee on the Constitution? But the other members will be inactive, we will get

[29] *Procès-verbal*, vol. I, pp. 11-12, July 9, 1789.

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no benefit from their ideas. It would be easier to treat each article in the different Bureaus, whose opinions would be reported to a committee of correspondence, which would put them together for judgment by the Assembly." [30]

The final decision was for a Committee on the Constitution to be made up of eight members elected by ballot in proportion to the number of deputies of the three orders. The committee would present a draft of the Constitution, which would be discussed in the bureaus, and then debated in the general Assembly for final vote there.[31]

From time to time attempts were made to railroad decrees through the Assembly without reference to the bureaus. After the fall of the Bastille, and the spread of disturbances throughout the country, a proclamation was proposed by Lally-Tollendal authorizing the municipalities to organize militia for the restoration of order. To the deputies of the extreme left it appeared a dangerous step, but a more conservative group called for immediate and drastic action. "It is true", said their spokesman, Dupont de Nemours, "that wisdom requires careful consideration." "But", he added, "this is not an occasion for indulging in deep meditation, for referring to the Bureaus the examination of a matter which is not susceptible of such an examination. You are not divided in your views; I conjure you by all that you have of virtue, of courage, and of patriotism, let us decide at once." Fermond immediately moved "that the proposal be referred to the Bureaus to be discussed there after due reflection." "In public affairs", warned another speaker, "one must always be on guard against the charm of eloquence, and eloquence never exercises a more powerful sway than when it is equalled by the zeal and the purity of intentions of the speaker." [32] The motion was referred to the bureaus.

[30] *Point du Jour*, vol. III, p. 162, July 15, 1789 (Session of July 14).

[31] *Ibid.*, p. 163.

[32] *Archives parlementaires, première série, 1787-1799*, edited by Mavidal and Laurent (Paris, 1879, 1875-1913), 82 vols. in 83. Vol. VIII, pp. 252-255, July 20, 1789. For the reports of the bureaus, and the final fate of the motion see *Point du Jour*, vol. III, p. 278, July 25, 1789 (Session of July 23).

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Occasionally, again, discussion in the bureaus was sufficient to kill an unpopular measure without further debate. A motion for setting up a committee to administer Paris and at the same time prepare a municipal constitution was brought up on July 24 and at once referred to the bureaus, which were given two hours to discuss it. The minutes of the Assembly show its fate upon its return: "The motion which had been referred this morning to the examination of the Bureaus having been discussed by them, the President asked if the author would like to support it by new arguments and offered him the floor. No one having presented himself, it was unanimously resolved to pass on to the order of the day." [33]

The bureaus did not always restrict their discussions to questions referred to them. When they reported back after the two-hour session just described, one bureau, the twenty-first, instead of reporting on the business given it, called for a general report by the Committee on the Constitution to be presented within three days, and for immediate reference to the bureaus of at least a part of the committee's findings.[34] Similarly, during the morning sessions of July 30, in spite of the fact that the subject assigned for discussion was the Declaration of Rights, the reporter for one bureau, Duport, raised the question of the need of organizing the provincial Estates without waiting for the Constitution to be finished.[35]

On July 28 an attempt was made to include in the work of the bureaus that of committees of investigation. During the discussion on the establishment of a committee on police and administration to investigate charges of treason, Guillaume opposed such a committee as not needed. Instead, he proposed to refer to each bureau, for report in turn, a certain number of accusations. His proposal found no support, but objection was not to the use of the bureaus, but to legislative interference in administration. "Legislators", said Dupont de Nemours, "should occupy themselves with law-making only,

[33] *Procès-verbal*, vol. II, pp. 11-12, July 24, 1789.

[34] *Ibid.*, vol. II, p. 12, July 24, 1789.

[35] *Journal des États-Généraux*, vol. II, p. 271, July 30, 1789.

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and should refuse to consider matters which they cannot affect by laws of general application." [36]

As was said at the beginning of this study, there is in the correspondence of the time little reference to the bureaus. There are, however, in the recently published intimate letters of the Marquis de Ferrières a few brief references to the work of these groups. A provincial noble, deputy to the Constituent Assembly, of a retiring disposition but not at all lacking in common sense, one who took no definite stand in the violent quarrels of the Revolution but tried to maintain a middle position, the Marquis de Ferrières found a place for himself in the bureaus. A July letter of his is of interest as an evaluation of the bureaus from one point of view. "A large part of the Nobility", he writes shortly after the three orders had joined to form the Constituent Assembly, "finds it difficult to unite heart and soul with the gentlemen of the Commons. As for me, I feel at home here, especially in the Bureaus, where I am at ease. I talk when I want to, without tiring myself out, and am listened to with much respect." [37] A few days later, after the fall of the Bastille, he writes to his sister:

> All is going well in the Assembly; the Orders are of one mind. The Commons have both judgment and intelligence; there are a few heads filled with exaltation, but where doesn't one find them? I am in the same Bureau with the Chevalier de Boufflers; he is kind-hearted, dependable, and clear-thinking. The members of the Commons have a good deal of respect for us, especially in the Bureaus. I speak there as much as I wish, and get a good hearing. As to the general Assembly, I don't open my mouth there, and I have my reasons.

Rather maliciously he adds, "Everybody is there; there are women who don't miss a meeting, who stay there five or six hours on end. I might say with Tacitus, 'They have neither husbands, nor children.'" [38]

[36] *Archives parlementaires*, vol. VIII, pp. 292-293, July 28, 1789.

[37] Marquis de Ferrières, *Correspondance inédite, (1789, 1790, 1791)*, pub. and ed. by Henri Carré (Colin, Paris, 1932). To Mme. de Ferrières, July 10, 1789, p. 84.

[38] *Ibid.*, To Mme. de Medel, July 24, 1789, p. 97.

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A letter from the Marquis to his wife on the same day carries a similar report, though it includes a hint as to the lessening importance of the bureaus in the life of the Assembly:

> Rabreuil [his political correspondent at home] wants me to try to get myself into the newspapers. I? Oh, no! I am trying to get myself unknown. There are others enough who know how to draw public attention. In the unhappy circumstances in which we are, the respectable man, who loves the good, must tremble for fear his best intentions may produce an opposite result. I do not speak at all in the general Assembly, and in that I am like eleven hundred and ninety who don't say a word, some because they have nothing to say, others because they don't want to. In the Bureaus I express my opinions, I am listened to there; there one can do some good. But the Bureaus do nothing except discuss, so that they do not amount to much.[39]

Still, he is proud to have a place where he can get a hearing. There is a note of quiet satisfaction in a letter to his wife dated July 29: "Write to my father, and give him the news about me, for I am overwhelmed with things to do, now that we are working on the Constitution, being, as I am, the one in my Bureau who is most listened to, and with the duty of editing the articles." [40]

On July 29 a set of permanent rules of procedure was adopted by the Assembly, embodying the experience of its two months of existence. The bureaus, apparently, were still considered as having justified themselves, for important functions were given to them.[41] They retained practically unchanged their duties in connection with the election of the president and secretaries of the Assembly, and of members of committees. Their chief function, however, was that of considering motions. "A question relative to the Constitution or to legislation" was to be brought before the Assembly three times. It must first be read and motivated by its author, then seconded by two members and admitted to general debate. "The ques-

[39] *Ibid.*, To Mme. de Ferrières, July 24, 1789.

[40] *Ibid.*, To Mme. de Ferrières, July 29, 1789.

[41] *Procès-verbal*, vol. II, July 29, 1789.

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tion shall then be examined", read the rule, "whether it shall be rejected or referred for discussion in the Bureaus; in the latter case, the day shall be set on which the question, after having been discussed in the Bureaus, shall be reported in the general Assembly for final consideration there" and decision by majority vote. The bureaus were to be reorganized each month by a complicated mathematical method "in such a way that the same delegates will no longer be together." The general Assembly would meet two mornings a week, the bureaus every evening.[42] A meeting of the general Assembly could also be called upon the request of five bureaus.

The first important question brought up for discussion under the new rules was the Declaration of Rights. On July 29 the President of the Assembly announced that bureau meetings would be held that evening and the next morning for the discussion of a number of drafts which had been placed in the hands of the deputies. After these meetings had been held, reports on the drafts were brought back to the Assembly. The result would seem to have been disappointing. "It would appear", says the *Journal des États-Généraux,* "that these separate assemblies are not fulfilling the function expected of them. In several Bureaus the discussion on the Declaration of Rights ended with very few observations. In others all the different drafts presented up to now were rejected."[43]

Out of these discussions there came, however, new drafts drawn up by the bureaus themselves. Significantly, the draft finally adopted by the Assembly for consideration in general session was that prepared by the sixth bureau. One member of the bureau at least was surprised at the honor given his group. In his astonishment at the simple means by which this result had been achieved, there is a note that is strangely famil-

[42] The rule as given in the *Procès-verbal* and the *Archives parlementaires* states that "the general Assembly shall meet every morning except Sunday." This is not the original rule, but is the rule as revised on August 1, for on that day it was decided that the geenral Assembly should not meet weekly, "as fixed in the rules just passed", but should meet daily except Sunday. As will be seen later, a discussion of great interest took place on this question of the relative importance of the general Assembly and of the bureaus.

[43] *Journal des États-Généraux*, vol. II, p. 270, July 30, 1789.

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iar to anyone having to do with group processes. His bureau, he remarked, had felt that it was merely laying out a blank canvas.[44] "If this Bureau were still in existence", he is reported as having said, "it would be very much surprised to see the preference given this Declaration."[45]

The importance given to the bureaus by assigning them morning hours led a deputy to demand, on July 30, "that general Assemblies be held every day, and that meetings by Bureaus take place in the evenings." Another speaker supported him vigorously. "Agitation in favor of the nation's interests", he exclaimed, "must be made in the midst of public opinion, with all the provinces together, not in secret places and not with a feeble part of the nation." Members of the committee which had drawn up the rules of procedure defended the bureaus and insisted on their original plan of only two Assemblies a week.[46] A member of the Left, Bouche, objected that the meetings by bureaus had their inconveniences as well as advantages. "In small meetings", he said, "opinions are weakened by reciprocal differences; in large assemblies, on the contrary, hearts are strengthened, electrified. Names, ranks, distinctions amount to nothing; everyone in the general Assemblies will regard himself as a portion of the sovereign of which he is the representative."[47]

The editor of the *Journal des États-Généraux* comments from the point of view of a believer in action; his report is worth giving in full:

> To convince oneself of the usefulness of the Bureaus it is only necessary to recall the motive of their founding. In the first place it was not to make any definite decisions, it was to converse, to discuss on an intimate basis, and this secret discussion does not prevent general discussion in the Assembly. Their purpose, then, is to hold the Assembly in inactivity, to prevent its progress for five days in the week.

[44] *Ibid.*, vol. III, p. 10, Aug. 20, 1789. Gaultier de Biauzat (Mège, *op. cit.*, vol. II, p. 248, Letter No. LXVI, Aug. 20, 1789) names Anson as the deputy in question.

[45] *Point du Jour*, vol. IV, p. 177, Aug. 21, 1789 (Session of Aug. 20).

[46] *Journal des États-Généraux*, vol. II, p. 278, July 30, 1789.

[47] *Archives parlementaires*, vol. VIII, p. 307, July 30, 1789.

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> But are these conversations so useful? Why, in this case, have several deputies preferred to remain in their studies to prepare important matters for the general Assemblies?
>
> Can we not even say that they are dangerous, as M. Bara has suggested? These committees are the place where the military aristocrats, the clergy, officials of the judiciary develop their ideas artfully; they would have kept silence in an Assembly of twelve hundred persons. They speak boldly before thirty, half of whom encourage them. The good patriots in their midst find themselves isolated; the obligation of some politeness, the habit of an old respect regain their power in proportion as one draws near to a bishop or a noble. . . .[48]

The result was that on July 31 the rules were amended to require meetings daily except Sunday, general Assemblies in the morning, bureaus in the evening. The advocates of the steam-roller were gaining over those who believed in the values of group discussion.

On August 3 an important debate took place "on the form of discussions and public deliberations." In the course of the debate the interesting idea was brought up by Foucault, one of the most irreconcilable nobles, of establishing communications between the bureaus. Its effect, of course, would have been to lessen the importance of the general Assembly meetings, and to make of the bureaus more powerful organs. The suggestion found no support.[49]

Another suggestion made at this time was that debate in the Assembly be limited to five minutes per speaker and to ten speakers per motion. To this the Bishop of Langres objected:

> Already the discussions in the Bureaus have been much restricted by the suppression of the (morning) Bureau meetings. If the discussion so much needed to prepare the Constitution of the State is further limited to ten speakers or to a few minutes, freedom of expression would be attacked and nearly destroyed. . . . How indeed can the twelve hundred representatives charged with discussing and judging be reduced to ten

[48] *Journal des États-Généraux*, vol. II, p. 278, July 30, 1789.

[49] *Ibid.*, vol. II, p. 329, Aug. 3, 1789.

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opinions or speeches, if it is true that reason is prepared and judgment ripened by the collision of thoughts?[50]

Limitation of debate was rejected.

On the famous night of August 4, in a delirious outburst of patriotic exaltation, real or affected, the deputies of the Clergy and the Nobility made a gift to the nation of many of their feudal privileges. To enact into law this feudal revolution, the Assembly plunged into a mass of constitutional legislation that filled morning and evening sessions and left very little time for the meetings of the bureaus. From August 19 to September 12 only seven motions appear to have been submitted to them for discussion, and from then on none at all during the rest of the Assembly's existence. The bureaus were not, however, dissolved. Until the Assembly dispersed on Sept. 30, 1791 they continued to exercise their function as units for the election of officers and committee members. It is more than probable that on such occasions they also held informal and unreported discussions. The regulations concerning the reference to them of proposed legislation were not repealed but simply fell into disuse. On December 1, 1789 Beauharnais proposed converting the bureaus into standing committees, to which would be assigned the functions of the committees already existing. "The motion", reports the *Journal des États-Généraux*, "had no success. It seems that the Assembly wishes to allow the Bureaus to continue to exist."[51]

One reason for the decline of the bureaus was no doubt the growth of the standing committees. By the night of August 4 eight standing committees had already been appointed. On August 12 three more were named, and on August 29 another. Eight more were set up before the end of the year, and fifteen during 1790.[52] The Constituent Assembly also found itself overburdened with administrative affairs. In the words of Mme. de Stäel, it passed in a little over two years more decrees

[50] *Ibid.*, vol. II, p. 330, Aug. 3, 1789.

[51] *Ibid.*, vol. VI, p. 235, Dec. 1, 1789.

[52] J. Guiffrey, "Les comités des assemblées révolutionnaires", in *Révue historique*, vol. I, pp. 438-483.

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than the English Parliament in fifty. For the leisurely processes of group discussion there was simply no time.

But the chief reason for the disappearance of bureau discussion was that suggested in the debates on procedure. Party government had sprung up, the majority wanted action, and disliked the non-partisan deliberations in the loosely organized groups. From the very beginning of the Estates-General, a closely knit clique made up around the Lameths, Duport and Barnave had been formed. During the early days of the Constituent Assembly the radical deputies from Brittany met regularly to agree upon measures. When the Assembly moved to Paris early in October, all the other liberal deputies met with them in what came to be known as the Jacobin Club. About the same time as the Jacobin Club was formed, "several members of the Assembly, who . . . were able to judge the advantages to be secured from a uniting of deputies to obtain preponderance in the Assembly, decided to use the same means to increase the influence of their party." The result was the Club of '89, led by Sieyès, Mirabeau and Lafayette.[53] Party leadership and the steam-roller made an end of discussion.

III

The Assembly that followed the Constituent Assembly was that known as the Legislative. It was the first to operate under the new Constitution. On June 21, 1791 the old Constituent Assembly had passed a law, which became part of the Constitution, defining the legislative procedure for the following Assemblies. Bureaus were provided, but only for the purpose of verification of the credentials of delegates.[54] Rules of procedure for the consideration of motions were given in detail, but the bureaus had no place in the scheme.[55]

In the Legislative Assembly, which met October 1, 1791, bureaus were accordingly set up for certifying to the election

[53] Theodore Lameth, *Mémoires*, publiés avec introduction et notes par E. Welvert (Paris, 1913), pp. 88, 112, 114.

[54] *Collection générale des lois*, Paris, 1792-95, 18 vols. in 23. Vol. IV, pp. 1186-1187, Arts. XXX–XXXII.

[55] *Ibid.*, vol. IV, pp. 1191 *et seq.*, Arts. LVI *et seq.*

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of members, and were also used for the election of the president and secretaries. Apparently they also held some preliminary discussions, for on October 11 a deputy remarked that the articles of a draft of rules of procedure "have been debated for two weeks in the committees."[56] At this time the only committees were the election bureaus. In the definite set of rules of procedure adopted soon after, the function of the bureaus was limited to the election of officers of the Assembly and of members of its committees. During the discussion of the articles concerning the procedure on motions, the old article was read which gave to the Assembly the right to decide if the motion was to be referred to the bureaus, or discussed at once in the Assembly. A single deputy arose to support this article on the ground that "it prepares many minds." The article was dropped upon the remark that the Constitution provided a fixed procedure with no mention of bureaus.[57]

It is easy to find at least one reason why the bureaus were not revived. The rules used by the Constituent Assembly had contained no provision for definite committees; the new rules of the Legislative included a list of 23 standing committees.[58]

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[56] *Archives parlementaires*, vol. XXXIV, p. 167, Oct. 11, 1791.

[57] *Ibid.*, vol. XXXIV, p. 189, Oct. 12, 1791.

[58] *Ibid.*, vol. XXXIV, pp. 275 *et seq.*, Oct. 18, 1791.

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REVIEWS

The Mind and Society: Treatise on General Sociology. By VILFREDO PARETO. Edited by Arthur Livingston. Translated by Andrew Bongiorno and Arthur Livingston. New York, Harcourt, Brace and Company, 1935. 4 vols.—xviii; vi; vi; 2033 pp. $20.00.

Some Relations Between Political and Economic Theory. By G. D. H. COLE. London, Macmillan and Co., Ltd., 1934.—vii, 92 pp. $2.00.

An Introduction to Pareto and His Sociology. By GEORGE C. HOMANS and CHARLES P. CURTIS, JR. New York, Alfred A. Knopf, 1934.—xiii, 299, vi pp. $2.50.

Towards the end of the four volumes in which Pareto expounds his theory of politics and his theory of social theories, he writes: "the vagaries of the historical school, with its childish denial of the uniformities (laws) of social science, come on the scene at a time when a State-worshipping mysticism and a morbid patriotism are severing all contacts between the far-advanced natural sciences and a literature that is usurping the name of social science." That is a shy which, at one throw, sweeps a large number of academic cocoanuts off their perches. Pareto is at his happiest when he is scarifying the "non-logico-experimental thinkers" who cannot conceive of social laws save as *a priori* statements of absolutes, part of some *Wissenschaft* of value. He properly insists that a sociology does not deny the existence of a philosophy of value or say that itself is more valuable. It does not, as experimental, even state absolutely that "truth" can only be known through experience. It merely moves on a different plane from that of absolute statements on truth and value.

It has been the fate of Pareto, who despised the public, to have to be introduced to the world by Mr. Aldous Huxley because he is a "great noise" with that public. Yet Pareto deserved his fate. Despite all his praise of the pure logico-experimental method and his exposure of the dependence of "derivations", or intellectual systems, on "residues" or sentiments, his writings are permeated with certain obsessive prejudices, peculiarly against something he calls "humani-

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tarianism", against which he preaches with evangelical fervor. Culminating irony—it is precisely to this "residue" that Pareto owes his logico-experimental importance, as providing a theory that has had practical effect. It is surely an unnecessary, if tolerant, patronage for Mr. E. F. Carritt to dismiss Pareto's sociology as a "science of the obvious", since Mussolini, who has probably not heard of Mr. E. F. Carritt, finds it all so little "obvious" as to take from Pareto much of the philosophy of Fascism.

Just as it was the fate of Sorel, the Marxist and apologist of Lenin, to inspire Fascism, so it was also the fate of Pareto, critic of "State-worshipping mysticism", exiled from Italy by the universities, to end, summoned to Italy, as an honored Fascist Senator. These Fascist honors were, in part, the nemesis upon this dry rationalist for his —intensely rational—exposure of the primary part played in human action by the non-rational and, hence, for Pareto's (apparent) approval of anti-rationalist philosophy. They honored him because they misunderstood him. That would have appealed to him.

Pareto, however, has a better claim to fame than his moralistic (or immoralistic) interpretation of history through the appraisal of force. He builds upon a basis laid, before him, by Vico, Bentham, Comte, Gaetano Mosca and James Frazer. In these four volumes, with their elaborate classification of "residues" ("instinct of combinations", "group persistencies", "sociality", and the rest), much is written and little is said—certainly less than has been said by the writers of the Chicago School in the last ten years. Every science, however, to be truly based must be a "science of the obvious", wherein the obvious—that the apple falls—is transmuted into the certain and coherent—the law of gravitation. That work of true basing, despite all his devastating discursiveness, Pareto undertook.

His science was "just a quest for uniformities, and that is the end of it." Such a uniformity, for example, he believes himself to have revealed when, in a criticism of J. S. Mill, he points out that Mill should have been able to prophesy that, with the coming into power of a new group of political consumers, "liberty" of the type that appealed to the leisured middle class, from which Mill came, would cease to be in the same political demand. Pareto all too seldom states with succinctness and precision his much heralded "uniformities" but, at least, he provides the material which offers the opportunity for them to be formulated. Mr. Livingston deserves well for having introduced, by his translation, more students to the mood and magistral work of this great man.

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How healthy this mood of Pareto is can be seen when we turn to Mr. G. D. H. Cole's *Some Relations Between Political and Economic Theory*. Even Homer nods, but on this occasion Mr. Cole sleeps. Even so, the writing and thought have that eminence which (as in the case of all Mr. Cole's work) demands attention and respect. "Political laws are on the face of the matter", Mr. Cole tells us, "enactments made by men and alterable by men." Of Pareto's uniformities, in this treatise on the nature of political theory, there is not a word. There is a passing reference, in a penultimate chapter where Mr. Cole turns in his repose, to "a school of writers in the nineteenth century who were accustomed to draw a sharp distinction between political philosophy and political science", but political science, he hastily adds, deals with means to a set of ends already assumed to be satisfactory and, for this reason, "it has not seemed necessary" to include further discussion of it. Mr. Cole settles down again with the sedative reassurance that this political science (of the true nature of which both Bentham and Marx, whom he discusses, were well aware) is merely a study of a "comparative government". The body of the book consists of philosophical chapters on Hegelianism, Utilitarianism and Marxism. Mr. Cole reaches the comforting conclusion that politics is, "as compared with economics, *inevitably* far more about what ought to be and far less about what is." Why, he does not say. There is an interesting passing allusion to the curious fact (emphasized elsewhere by Dr. Theodore Abel) that political theory is, in many countries, the bellboy of ethical philosophy for no more profound reason than that the teachers of the first are chosen by the academic professors of the other. Right indeed, Mr. Cole holds, is not absolute but relative—a matter of a value judgment expressed in a shape appropriate to a changing and developing situation. From this it is but a short step across to expound the merits of the New Theology of Marx.

Mr. Cole acknowledges that what ought to happen is not independent of what can happen within the limits of the situation. Indeed he is gravely alarmed about the claim—"the most dangerous of all"—that economic laws that are universally valid (in hypothetical situations) exist, since "what is universally valid must evidently prescribe the limits within which alone ethical values can be realised." Mr. Cole's blind spot is that, whereas he fully admits the shaping power of objective forces upon the application of "value judgements", he entirely ignores the existence of psychological constants upon which political and economic laws (admittedly merely separable by abstrac-

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tion) can be based. "Men's psychological reactions are not, however, in the long run an independent creative force." Unless this is the platitude that we can't have all we want, it means that "psychological reactions" are resultant from stimuli, and indeed are merely the reflexes of shifting "objective forces"—as presumably (although Mr. Cole is not Marxist enough to say this) are also the "value judgements". Further, it means this, not as an ultimate psychological hypothesis, but as an immediate and negative proposition in the social sciences. There is no human nature and, hence, no natural laws of it. In brief, Mr. Cole is, in this book, a naïve behaviorist (i. e., the implications of behaviorism, and its reservations to materialism, are not discussed), with a value judgment thrown in for good luck. The book concludes with words of advice to revolutionary statesmen.

Messrs. Homans and Curtis have supplied us with a courageous little *Introduction to Pareto* which lays emphasis upon his work as the rationalizer of the irrational, and which serves to show the interest displayed in Pareto among Harvard students. They are not alone.

GEORGE E. G. CATLIN

LONDON

India, Minto and Morley, 1905-1910. By MARY, COUNTESS OF MINTO. London, Macmillan and Co., 1934.—viii, 447 pp. $7.50.

The Development of Capitalistic Enterprise in India. By DANIEL HOUSTON BUCHANAN. New York, The Macmillan Co., 1934.—x, 497 pp. $5.00.

The Indian Struggle 1920-1934. By SUBHAS C. BOSE. London, Wishart & Company, 1935.—353 pp.

These three books deal with India of the twentieth century from three entirely different angles. They cover a period of thirty years. The first book is compiled from the correspondence between the Viceroy of India and the Secretary of State for India during those fateful five years which witnessed the first major nationalistic unrest and the introduction of the first broader constitutional reforms in India. Morley has told of this period in his *Recollections,* which he wrote in his retirement after the outbreak of the World War and which were published in 1917. Now Earl Minto's widow tells, twenty years after the death of her husband, the story of those five years from the viewpoint of the Viceroy of India. The fourth Earl

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of Minto, whose great-grandfather, the first Earl, had been governor general of India, 1806-1813, was appointed to succeed Lord Curzon as Viceroy just at the time when, under the impression of Japan's victory, as a protest against Curzon's partition of Bengal, and with Tilak as the powerful leader of the new nationalism, the country passed through a period of great storm and stress. Minto, who had been governor general of Canada (and whose appreciative biographer, John Buchan, is now governor general of Canada), came to India with the attitude of a Tory soldier but at the same time with practical experience of constitutional rule in Canada and with a courtesy and suavity of manners in sharp contrast to Lord Curzon's ways.

Lord Minto was faced with two problems: the pacification of India and the relations between the Viceroy and the Secretary of State for India, who was then Lord Morley. The first was solved by a method which has since governed British policy in India: to suppress with a stern hand all violent agitation for far-reaching reforms, but at the same time to try to win moderate opinion by progressive reforms which, although more in appearance than in reality, transfer a certain limited part of the powers and benefits of government to the people of the country or rather to its upper classes. Lord Minto had an open mind. "At the same time everyone, who thinks at all, feels that there is change in the air", he wrote. In his policy he had to overcome the resistance of the British official in India, "always ready to obstruct anything which can be twisted into meaning interference with British official rights." The correspondence and the diary published in this book show the reasons why the reforms came so slowly, slowly not from the point of view of the complicated governmental machine in India and in London, but slowly from the point of view of an excited and expectant Indian public opinion. Lord Minto had a strong preference for the Mohammedan community in India and for the native princes and chiefs, and the policy of considerate friendliness towards them which continues today was started by him. While the reforms were discussed between Calcutta and London, the government of India resorted to rigorous "repressive measures which followed one another in rapid succession, chilling the public life of the country, and stunting its growth and development" (S. Bannerjee, *A Nation in Making*, p. 249). Hand in hand with the ruthless repression came the reforms which were destined to rally the princes, the landholders, a group of the moderates and, more important than the others, the Mohammedans. The theory of

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"counterpoise of natives against natives" was first made a constitutional policy by Lord Minto. The All-India Muslim League, founded in December 1906 and representing the conservative Muslim landholders and magnates, coöperated with Lord Minto in creating Muslim communalism in India, which many Indians regard as India's Ulster.

Lord Minto's administration started in many ways a new epoch in Indian history, which still dominates the Indian constitutional reforms of 1935. But this book tells us very little about India, about the tremendous changes in the intellectual and social atmosphere of those years. As far as India is concerned, it moves in a strange air of detached unreality. The great movements stirring India are recorded here, if at all, only by faint echoes. The book is more interesting for the written dialogue between Minto and Morley. Their courteous exchange of ideas and impressions lends it importance and charm and represents a significant contribution to our knowledge of the mentality of the ruling class of the British Empire at the opening of the twentieth century. The dialogue between Morley, the Liberal, and Minto, the Conservative, about the House of Commons, imperial responsibilities and enlightened rule is worth while reading even for those who are not interested in India. It occupies practically all the important parts of the book, but chapter xxi may serve as an introduction to and a good résumé of it.

The changes which set in in India at the end of the nineteenth century are a complex process, intellectual, social and economic at the same time. Professor Daniel Houston Buchanan has given us a detailed and scholarly study of the development of capitalistic enterprise in India and a careful appreciation of its effects on the life of the people. Mr. Buchanan has lived for many years in the Far East and spent more than a year in India with the help of the Bureau of International Research of Harvard University. In India, as in all other Oriental countries, a rapid progress of Europeanization is destroying the order of many centuries. As was the case in Europe at the dawn of the modern age, "easy going, self-sufficing agriculture and handicraft are being forced out by a system of high-speed specialized machinery and communication. A new world is replacing the old, and the factory system is the skeleton upon which it is gradually and very irregularly taking form." What is happening at present is described by Professor Buchanan very aptly as an "amalgamation of East and West". From his experience in Japan he can compare the Europeanization and modernization of India under

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British rule with that conducted in Japan by a strong national government. He reaches the same conclusions which any observer will reach in comparing the modernization of Turkey and of those mandated territories which had formed parts of the former Ottoman Empire. "There is a striking difference between what has been done along this line (public health) in India and what has been accomplished in Japan. In spite of British rule, India has remained more like China", like a misruled backward country. The same is true of industrialization and economic progress. India, with a superabundance of raw material, cheap labor and an immense hoard of gold and silver, continues in extreme poverty and is less nearly self-sufficient in manufactured products than she was a century ago. Mr. Buchanan points out that the main reason is the fact that the British government in India, like colonial governments elsewhere, have acted on the old belief that the native's nature is fundamentally different and that he does not want improvement. The greater progress of the Japanese and of the Turks has been due to a large extent to the fact that the people trusted the government and the government understood and believed in its people. Colonial governments, even though animated by a certain sympathy with the subject populations, are generally incompetent to tackle the fundamental problems and are afraid of thorough-going reforms.

British officials in India believed in *laissez faire,* a political economy more in agreement with England's than with India's needs. India needed the introduction of a diversity of occupations, a training in industry, technical skill and the spirit of enterprise, all of which could be achieved in backward Oriental countries only with the active and sympathetic help of a government which identified itself with the people. The government of India not only did nothing to develop modern production in India and to teach the Indian better ways of production, but many governmental measures, especially the recent currency policy of the government, have run counter to the true interests of India, as did the whole educational system sponsored by the British in India. Professor Buchanan is right in pointing out that the transplantation of the methods of English education to India has been ill adapted to the needs of the country. "The literary and legal training once thought suitable for the ruling class in England did not meet the needs of a poor non-English-speaking country, ruled by aliens, and in want of economic reorganisation."

Professor Buchanan discusses all aspects of the industrial life of India and is especially interested in the conditions of labor. He

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has produced an excellent and reliable book, of interest to anybody studying the relations of Orient and Occident and the Europeanization of the East. There is no fundamental difference between Orient and Occident. Europe, in the middle ages not different from the Orient, has entered the modern age two or three centuries ahead of it. India and the East remained much longer in the medieval stage. Since their contact with the dynamic modern civilization, which originated in Western Europe but was universal in scope and aim from its beginning, the countries of the Orient have undergone a profound change. "Every people has its particular character, but similarities are far more marked than differences" (p. 11). The social, economic and political problems today confronting nations in East and West tend more and more to become similar. Mr. Subhas C. Bose's book, *The Indian Struggle 1920-1934,* shows that the Indian people, or at least some of its leaders, have entered the age of political maturity.

This is by far the most important publication on Indian politics in recent years. Mr. Bose has been an exile, and as far as I know his book has been excluded from India by the Indian government. It is not strictly up to the highest historical standards, as it was written without the necessary documents at hand and in haste. Nor is it a book of memoirs, although the author played an important rôle in the events of those years. (This rôle is nowhere stressed in the book.) The absence of an index is to be regretted. But notwithstanding its defects, this book should be read by everybody interested in India. It is the first detailed and connected narrative of those fateful years from the Indian point of view and an interpretation of the Indian struggle to the Western mind. But even a greater interest attaches to it by the fact that it is written by a representative of the new Indian generation. Its tone is entirely different from the ways of writing, speech and approach characteristic of Indian authors and politicians until very recently. It is without verbosity, without invocation of moral principles, without self-righteous incriminations against imperialism or the British. It is realistic, sober, mature. It is naturally and frankly opposed to any form of British rule or influence in India, but it is not bitter or full of complaints. It describes the great changes which have come over India in the last ten years: the awakening of the masses and of the women, the birth of a labor- and youth-movement, the realization of the necessity of fundamental economic and social changes. India of 1935 is entirely different from even the India which Lord Minto found or thought he found in 1905-1910.

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In 1924, at the early age of twenty-seven, Mr. Bose was appointed Chief Executive Officer of the Calcutta Municipal Corporation, was a close collaborator of Deshbandhu C. R. Das, the Mayor of Calcutta, whom he considers the greatest political leader in India in 1924-25, was President of the Second Congress of Youth at Karachi in 1931, and has repeatedly led the so-called left wing opposition to Mahatma Gandhi in the Indian National Congress. He recognizes the unique importance of Gandhi, but he vehemently attacks "Gandhi Orthodoxy". Gandhi has awakened the Indian masses by the conformity of his physical and mental equipment to the traditions and temperament of the Indian people. At a moment when all efforts towards constitutional reforms, which had been started by the Indian Liberals in the eighties, had failed, and all attempts to resort to physical force were doomed on account of the complete disarmament of India, Gandhi offered a new method. The Indian National Congress of today "is largely his creation. From a talking body he has converted the Congress into a living and fighting organisation. It has its ramifications in every town and village in India and the entire nation has been trained to listen to one voice. Nobility of character and capacity to suffer have been made the essential tests of leadership. His policy was one of unification. . . . Though he appeared as a dynamic force, he was not too revolutionary for the majority of his countrymen." In Mr. Bose's opinion Gandhi has failed, because, while he has understood the character of the Indians, he has not understood the character of the English, because the false unity of interests that are inherently opposed is a source of weakness in political warfare, and because the Mahatma had to play a dual rôle in one person, the rôle of the leader of a people fighting for its freedom and that of a world-teacher (pp. 327-331). These reasons seem to me only partly justified, least of all the second. Mr. Bose himself points out (on p. 134) a more essential shortcoming of Gandhi. By his appeal to the traditional mass-psychology of the Indian people, he has strengthened the weak traits in their character which had accounted for India's weakness and downfall. "For a people so prone to mysticism and supernaturalism, the only hope of political salvation lies in the growth of a sane rationalism and in the modernisation of the material aspect of life."

The book contains many illuminating chapters: on Burma and the Burmese; on socialistic tendencies in the Indian youth; on the labor movement with which Mr. Bose was intimately connected since the strikes at the Tata Works in 1928; on the non-coöperation movement

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in 1930; on the first Round Table Conference in London, which culminated in "an unholy alliance between the British Government and the Indian Princes, in order to thwart the mass awakening in India"; on the Gandhi-Irwin Pact ("even the blind followers of the Mahatma, when they read the forecast invariably remarked that it was unthinkable that their leader would agree to those terms"). This famous Delhi Pact, which led to Gandhi's participation in the second Round Table Conference, brought about a suspension of the fight without any definite assurances. The Round Table Conference was no real conference with final decisions binding on both parties. The Indian delegates were selected by the British government, and Gandhi, as the sole representative of the Indian National Congress, was naturally at a great disadvantage in a large assembly of about 100 men. Mr. Bose praises Lord Irwin's intentions highly, but immediately after his departure the official attitude began to stiffen, and the complete failure of Gandhi and the Indian cause at the second Round Table Conference is well known. The Mahatma was no match for the politicians in London. As he came back, the Indian cause defeated and he himself quickly arrested, India resumed her fight, but under much less favorable conditions than in 1930. In 1930 the tactics of the Congress had taken the government by surprise, but the Delhi Pact gave the government time to prepare its forces and to strike in 1932 immediately and ruthlessly. The forces of the Congress were finally disorganized by Gandhi's "blending of religion and politics." A period of Indian history came to a close. The struggle will be carried on by a different India.

The least realistic part of the book is the author's glimpse of this future India. He is right in saying that the party which will win political freedom for India will be also the party that will win social and economic freedom for the masses, and he may be right in adding: "Gandhi has rendered and will continue to render phenomenal service to his country. But India's salvation will not be achieved under his leadership." Jawaharlal Nehru, whose popularity in India today is regarded by the author as second only to that of Gandhi, has declared his belief that fundamentally the choice before the world is between some form of Communism and some form of Fascism, and has stated his preference for Communism. Mr. Bose believes, and probably he is right, that Mr. Nehru oversimplifies the issue. But Mr. Bose's choice is even more naïve. He proposes a synthesis between Communism and Fascism which (Mr. Bose has lived during the last two years in Central Europe) is much more Fascist than

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Communist. His reasons for thinking Communism unfit for India may be valid, but his few remarks about his own Fascist-Communist synthesis, which he designates by an Indian word *Samyavada,* reveal an astonishing lack of any deeper understanding of the political philosophy and practice of either Communism or Fascism. As the Indian intellectual generation of 1885 imitated mid-Victorian or late Victorian England, so the younger generation follows with greatest interest the apparently most modern social and political theories of Europe and America. That is not in itself an evil. Mr. Buchanan has shown in his book that India enters more and more the modern age in her economic life, that the amalgamation of East and West, of which Lord Minto in his Viceregal days caught the first glimpses, is quickly proceeding. Mr. Bose terminates his book by saying that the future of India lies with a party that will break the isolation that has been India's curse and bring her into the comity of nations, firm in the belief that the fate of India is indissolubly linked with the fate of humanity.

HANS KOHN

SMITH COLLEGE

Mercantilism. 2 vols. By ELI F. HECKSCHER. (English translation by Mendel Shapiro, from the German edition, with revisions by the author.) London, George Allen & Unwin, Ltd., 1935.—472, 419 pp. $15.00 per set.

This thought-provoking study of mercantilism marks an important advance in the history and criticism of economic statecraft. The problems of the early modern period are here treated with sympathy and discrimination. A genuinely objective point of view is skilfully maintained. There is none of the indiscriminate apologetics that destroyed much of the value of the work of the writers of the "Historical School". Nor is attention distracted from the analysis by disdainful comment on the naïve attempts at economic analysis inevitably to be found at such a stage in the development of economic thought.

Professor Heckscher brings a new technique to the study of the problems that occupied the German Historical School. He applies to these problems not only the technique of historical criticism, but also the analytical methods of pure theory. Furthermore, despite his primary interest in the description of the policies and the thought of the period, he is keenly aware of the substantial development of

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economic analysis. The most casual comparison with the second volume of Schmoller's *Grundriss* or with the works of Oncken and Cunningham will reveal the extent of the advance. This courageous treatment of the period as a whole is fully equal in quality to the most important recent monographs, such as Boissonade's studies of Colbert, or the work of Unwin and Tawney on special problems of English history.

The first volume is devoted to a description of the primary features of economic policy in the leading European countries. Attention is largely concentrated upon conditions in France, England and the German states, but there are many comparisons with other countries, including the Scandinavian group. Although a certain amount of local variation is recognized, the outstanding lines of development are held to be common to Europe as a whole. Three basic problems are studied: the struggle of the state with the decentralization and disintegration directly and indirectly due to feudalism; the regulation of industry in France and in England; the organization and control of overseas trade. These chapters do not attempt a comprehensive survey of the economic policies of the modern states, but they establish clearly all the essential features of economic statecraft in the early modern period.

Because the scale of treatment varies, the chapters vary somewhat in value. The treatment of standards of weight and measure and of the coinage is too brief to contribute much to the advancement of the subject, but the careful studies of the regulation of industry are excellent. They present a synthesis which carries us in many ways beyond the monographs and special treatises. The section on foreign trade is notable for an excellent chapter upon the trading companies of Holland. Short sections dispose of Portugal, Spain and France in brief but discriminating statements. Four substantial chapters are devoted to company development in England. There is little material here that will be new to English readers, but much power of compressed statement is shown.

Under the caption, mercantilism as a unifying system, volume one is, thus, concerned with a revision of the judgments and methods of the Nationalists. Volume two, mercantilism as a system of power, is devoted to a revision of the concept of mercantilism presented by Adam Smith. After two general chapters, Professor Heckscher proceeds to a careful analysis of mercantilism as a system of protection, of mercantilism as a monetary system, of mercantilism as a conception of society. This volume is based upon the theoretical

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writings of the period and upon state papers having theoretical implications. The significance of particular doctrines is qualified with reference to actual applications of the theories in practice. The literature used is extensive, and many of the state papers have been so imperfectly used by many writers that there is much fresh material throughout the volume. The point of view is new in many respects. This is especially true of the discussion of mercantilism as a concept of society. In this respect, Professor Heckscher feels that mercantilism and *laissez faire* had much in common, so that the science of economics of the late eighteenth century developed naturally out of mercantilist doctrines, without any substantial break and with less external influence than has commonly been supposed. Furthermore, mercantilism was in many ways directed towards economic liberty. "Mercantilist statesmen . . . opposed everything that bound down economic life to a particular place and obstructed trade within the boundaries of the state" (p. 272). But even in respect of objectives which did not "postulate economic freedom as their starting point", much doctrine was "consciously grounded in a theoretical conception of the utility of freedom, and was therefore made, at least in principle, to apply even beyond the boundaries of the State" (p. 272). The sharp lines of demarcation between mercantilism and *laissez faire* must thus be broken down. Instead of thinking of them as systems of thought which are merely opposed and different, we must realize that the system of *laissez faire* was a natural and organic development of various elements inherent in "mercantilism".

This thesis carries Professor Heckscher over to an evolutionary concept that is not explicitly developed. A complete acceptance of the evolutionary point of view and a full analysis of the process of development would ultimately lead to the abandonment of the attempt to formulate mercantilism as a coherent system of thought. Analysis of the actual process of development makes it necessary to concentrate attention upon individual concepts and doctrines. It then appears that mutually exclusive concepts persist side by side for long periods of time, utilized in many ways despite their inconsistencies, but never really reduced to unity in a positive synthesis.

The sixteenth century produced two sharply antagonistic concepts of the state. The Philosophers of the Commonweal conceived the state to be an association of its members for the achievement of their general welfare. Machiavelli conceived the state to be a union of many, brought about by superior force, as an end in itself. One con-

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cept leads to internationalism in all its aspects; the other leads to militant nationalism and autarchy. These concepts are logically irreconcilable, but in practice limited use was made of elements of each system of thought. Neither England nor France derived its concepts of policy from a single source. The Philosophy of the Commonweal was a vital factor in each country and entered into administrative traditions and theories in various ways. In the field of monetary problems, commodity theories and nominalist theories presented a similar antithesis from an early date. Any careful survey of the entire field of theory and policy would reveal a considerable number of relatively independent focal centers of development. Despite certain superficial appearances of coherence due to modes of expression, common interests, and similarities in the technique of analysis, the thought of a period possesses no genuine unity.

The full development of an evolutionary point of view would not greatly affect the primary judgments in Professor Heckscher's work, though it would inevitably lead to a change of title and to some changes in the detail of exposition. Conclusions and basic judgments are not involved because Professor Heckscher has accepted all the basic theses that are implicit in the mature evolutionary point of view. The formal arrangement of the text thus preserves some categories and concepts that are not consistent with the general trend of reasoning. There are many survivals of the essentially static method of description and analysis characteristic of the German Historical School, notably in terms which imply that "development" is a bare succession of mutually exclusive forms. The actual advance in thought and method is more considerable than the general structure of the book would lead one to suppose.

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Commons Debates, 1621. Edited by WALLACE NOTESTEIN, FRANCES HELEN RELF and HARTLEY SIMPSON. New Haven, Yale University Press; London, Humphrey Milford, Oxford University Press, 1935. Seven volumes.—xxiv, 343; 545; viii, 473; 448; 534; 482; xv, 656 pp. $35.00.

For a good many years Professors Wallace Notestein and Frances Relf have devoted their leisure time to tracking down, editing and publishing records of the House of Commons in the early Stuart period. Not only was there in those days no regular publication of parliamentary debates, nothing like the nineteenth century *Hansards,*

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but the *Commons Journals,* later published, are very fragmentary and inadequate for the early seventeenth century. As Mr. Notestein and Miss Relf showed in the introduction to their *Commons Debates for 1629,* the published *Journals* for that period give us not a finished record, but hurried jottings made by the clerk during the course of the debates, which were no doubt intended to be used in compiling such a record. For at least some of the parliamentary sessions of this period, and perhaps for all, records of this kind were made, but most of them have presumably perished. The clerk's rough notes, which are what the *Journals* represent, are not necessarily more authoritative than private diaries kept by members of the Commons.

Hitherto, the main sources of information for the proceedings of the Commons of the 1621 Parliament (the third of James I) have been the *Commons Journal* and Edward Nicholas' *Proceedings and Debates in the House of Commons in 1620 and 1621,* a diary published in 1766. The present collection, in the preparation of which the professors have had the collaboration of Mr. Hartley Simpson, includes fourteen diaries or other first-hand accounts of debates not previously published and a supplementary volume containing bills and other relevant documents. It comprises by far the most extensive body of materials available for the study of any single seventeenth-century House of Commons, and the editors deserve the highest praise for the zeal and skill and meticulous care with which they have performed their arduous and protracted labors. Only a fine spirit of scholarly enthusiasm could sustain such work as theirs.

In an introduction, which runs to more than a hundred pages, they take us into their confidence concerning some of the problems that have engaged their attention. An anonymous journal, which they designate as X and publish in volume II, is treated as the main account of the debates from the opening of the Parliament in January 1621 to April 17, and from November 28 to the dissolution at the end of the year. For the intervening period they regard as the main account a diary kept by Sir Thomas Barrington, which they describe as "the fullest notes ever made of the House of Commons until modern reporting was developed" and publish in volume III. In order to establish the text of X, which is a compilation from other accounts, they made use of five different manuscripts, and they took great pains to determine the authorship of an unknown source from which the compiler of X drew much material. The conclusion reached, that the author "may have been an elderly man from Suffolk and he may not have been", is not a very gratifying reward for a

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great deal of hard work; but a scholar's labor, fortunately, is never wholly lost. In other cases the editors have been more successful in establishing authorship. They prove by a masterly handling of evidence that John Pym was the author of the diary which is published in volume IV. They speak with feeling of "an interminable investigation of genealogical records, cases in courts, letters and papers" which resulted in the conclusion that one of the minor diaries which they publish was probably the work of Sir Charles Howard of Merrow. Of the more important diaries the authorship of only two remains unknown, one of these being the X compilation.

The diaries differ widely in extent and character. Each of the larger ones (X, Barrington and Pym) fills an entire volume, while two and a half pages suffice for a fragment of a diary found in the Egerton MSS in the British Museum. The editors think that Barrington comes nearer than any of the other diarists to reproducing the phraseology and idiom of speeches and the general tone of the Commons, but he leaves out a good deal, and his reporting of speeches is not always intelligible. Pym "made his minutes as no other man before or after him". His mind was analytical and logical, and he marshalled arguments in a masterly fashion, but he was little interested, seemingly, in who presented the arguments or in the order in which they were presented. A fellow-member of Pym's in this House of Commons was his future antagonist, Sir Thomas Wentworth, who also kept a diary, though a much briefer one, which is published in volume V. Wentworth was similarly interested in arguments and even less concerned with the *ipsissima verba* of speakers. Of the diaries as a whole the editors say: "Any one . . . may have errors and omissions similar to those in the [Commons] Journal, but seldom do all the diaries fail us at the same point. Between them they give us every aspect of the Commons' meetings, of committees in the afternoon and sometimes in the early morning, and the color of speeches. From them we could piece together a pretty complete account of the Commons."

Not the least interesting part of the introduction is that in which the editors evaluate the *Commons Journal* of 1621 in the light of knowledge gained from the diaries. The clerk, whose notes constitute the *Journal,* seems to have taken little interest or pride in his work, and as a recorder of the proceedings of the House he leaves much to be desired. His report of speeches is sometimes unintelligible, he mentions bills and fails to tell what happened to them, he gives no indication of the high tension and passion which marked

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some of the debates. On the whole, he "was pretty successful in taking the flavor and character out of a good deal that went on in the Commons"; he makes it seem a much duller place than it was. Though the editors have reduced his record to the position of only one among a number of sources for this House of Commons, its usefulness, in their opinion, is not at an end, and its obscurities and ellipses are clarified to a great extent by the diaries now published.

In such a collection as this the editorial apparatus is of primary importance, and no effort has been spared to make it as excellent and helpful as possible. The remarkably full index, over two hundred pages in length, through which most of those who use these volumes will approach them, and which is appropriately placed in the first volume, is a model of its kind. It would be easy to enlarge upon its merits, but it must suffice here to say that it enables the student who consults it to ascertain with a minimum of exertion and expenditure of time just what there is in these volumes on any particular subject in which he may be interested, no matter how particular it may be. A word should be said, too, about the erudite and invaluable footnotes. Those in the main accounts (X and Barrington) indicate where speeches and proceedings which are omitted may be found in other accounts, and direct the reader to further information regarding the contents of bills referred to and many other matters, and to different interpretations of remarks made in debate. These notes, in the editors' words, "have been made the clearing house for supplementary information whether from within these volumes or from other printed or manuscript material." In volume I there is a list of the statutes, law cases, petitions and parliamentary precedents cited in the diaries.

ROBERT LIVINGSTON SCHUYLER

The Political Philosophies of Plato and Hegel. By M. B. FOSTER. Oxford, at the Clarendon Press; New York, Oxford University Press, 1935.—xv, 207 pp. $3.00.

Morals and Politics: Theories of Their Relation from Hobbes and Spinoza to Marx and Bosanquet. By E. F. CARRITT. Oxford, at the Clarendon Press, 1935.—iv, 216 pp. $2.25.

The Oxford Press has undoubtedly done a real service to political scientists by publishing these two small but exceedingly substantial volumes. Both of them are somewhat assertively, though not ostentatiously, works on political philosophy by what one of those involved calls "professional philosophers".

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Those of us who are students of political science, but not philosophers, are doubtless willing in many cases to subscribe to the traditional view that, since philosophers and fools frequently hold the same opinions, the superiority of philosophers consists in their way of arriving at opinions. We are willing to admit that philosophers' views are the best views, provided the philosophers involved are not that variety of professional—or, perhaps, professionalized—philosopher who furnishes more than fancied support for the layman's feeling that a philosopher is someone with a flair for making the obvious obscure. These two Oxford philosophers, it may be asserted with some assurance, are not that kind. Indeed, both seem to write with some conscious hope that they may appear in contrast with the unfavored variety.

Mr. Foster is convinced that philosophy, if it is to be genuinely scientific, must emphasize the importance of a definite subject matter, that is to say, great works in the history of philosophy. He argues that only by such study of the history of philosophy can philosophical science be preserved from an excessively academic interest in methodology, on the one hand, or, at the opposite extreme, from extravagant mysticism and unscientific imaginative speculation. Mr. Carritt, perhaps because he eschews a preface, does not set out so expressly his views on the study of philosophy. At the same time, his attitude appears not to differ basically from that of Mr. Foster.

Both authors essay short studies of great political works. Mr. Foster limits himself to two great figures, whereas Mr. Carritt concerns himself directly with nine and, more incidentally, with others. The scope of Mr. Foster's essay is even more restricted than is implied by his title; for he deals with only one work of each writer, the *Republic* of Plato and Hegel's *Philosophy of Right*. Mr. Carritt concentrates his attention on a single important element in the writings to which he addresses himself. He is interested in reflection upon the obligation of obedience to law.

Mr. Foster not unnaturally finds the essence of Plato's political philosophy in the treatment of the Polis in the *Republic*. The important characteristics of this treatment, he insists in turn, grow out of the relationship between the Polis, which is, of course, the "ideal city", and Plato's "first city". The "first city" is characterized by craft concepts and, more especially, by the principle of the division of labor. The Polis contains not only the various classes of artisans of the "first city" but also the class of warriors and the class of rulers. Mr. Foster argues that inconsistency and con-

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tradiction are present in Plato's political thought because of a simple confusion. Plato by analogy extends uncritically to the three classes of the Polis the same principle of the division of labor that prevailed in the "first city" with respect to various kinds of craftsmen, who in the Polis form one class. Unfortunately, the assumption of this identity vitiates the whole account of justice in the Polis—and, incidentally, in the individual as well. In the "first city", the craftsmen are by nature able to impose form upon their material but not upon themselves. This limitation was, in reality, responsible for the introduction of warriors and rulers. On the other hand, the extension of the craft concept to the rulers in the Polis results in a situation where the rulers impose organization on the classes of the Polis according to the principle of the division of labor. But the rulers are themselves such a class. The question of who imposes form on the rulers displays the weakness of the whole craftsman concept of ruling. It is clear that Plato himself serves as sovereign and that the Polis, possessing only an ideal existence, cannot have reality. Had Plato endowed the rulers with constituent power, they would have been constituted by him not a ruling class but a sovereign body. "By this single stroke the Polis would have become a State." As it is, Plato allows the rulers, through their virtue of wisdom, to prescribe laws only to others, not to themselves. Hence, they have not freedom in the sense of obedience to self-imposed laws. Those who do obey the laws, that is to say, the other classes, possess only their respective class virtues and the universal virtue of justice. Therefore, lacking the wisdom to apprehend the principle of the laws they obey, they are likewise without freedom.

It is precisely the assertion that the Platonic doctrine of justice precludes freedom—"subjective" freedom—which epitomizes Hegel's criticism of Plato. Mr. Foster considers this criticism only partly justified. He argues that Hegel throughout confuses two concepts of freedom. These seem to be what we might today call *constitutional* freedom, that is to say, opportunity to participate in the formulation of law, and *civil* freedom, that is, opportunity to make choices unrestricted by law. Mr. Foster, after a careful analysis of Hegel's political philosophy, concludes that Hegel, equally with Plato, permits only the rulers to participate in subjective freedom; for Hegel, in holding only that will to be free which wills the universal, excludes the will of the subject. Extension of a share in the creation of law to all members of the state is, it need scarcely be added, the accomplishment of representative democracy.

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Mr. Carritt suggests that the moral theory of all political philosophers may be made the basis for dividing them into two classes. Into the first class fall those who assert a definite distinction to exist between duty and interest. Those who deny this distinction form the second class. On this basis, Mr. Carritt classifies the various philosophers with whose works he deals. Locke and Kant he places in the first class. The others fall into the second class, though T. H. Green, equally influenced by Hegel and Kant, and, to a lesser extent, Hume are not so typical as Hobbes, Spinoza, Rousseau, Hegel and Bosanquet. Mr. Carritt's definite preference is for Locke and Kant; for his thesis is that any attempted explanation of political obligation in terms of anything except obligation will inevitably involve "confusion, self-contradiction, and the evident misdescription of facts which we cannot doubt." In a second part of his little book he states, in terms of his thesis, his own views and conclusions with respect to duty and interests, rights, liberty, equality, the general will and the contact. As his preference is for Locke and Kant, so his bias is clearly against an authoritarian determinism and, as with Mr. Foster, for representative democracy. It is cheering to see a case against dictatorship twice set out in such profound fashion.

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The Russian Revolution, 1917-1921. By William Henry Chamberlin. New York, The Macmillan Co., 1935. 2 Vols.—xi, 511; ix, 556 pp. $10.00.

Russia's Iron Age. By William Henry Chamberlin. Boston, Little, Brown and Co., 1934.—ix, 400 pp. $4.00.

In the works under review Mr. Chamberlin has summed up his twelve-year stay in the Soviet Union as a foreign correspondent. His *Russian Revolution* and his *Russia's Iron Age,* covering periods and events separated by seventeen or eighteen years, portray both the October Revolution and the later period of Soviet development.

The former may be considered the first full-length history of the Russian Revolution by an American. He emphasizes throughout the factual aspects of the events. His presentation of facts is based upon wide and thorough research, and is accompanied by excellent bibliographical notes and valuable appendices consisting of English translations of the most important laws and decrees. Here he has performed a prodigious task which places heavily in his debt many future writers on this eventful period.

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As causes of the fall of the Tsarist régime, Chamberlin stresses the dissatisfaction with the status quo on the part of the industrial workers, of the non-Russian nationalities, of the intelligentsia and, above all, of the peasants. These forces created the "Gordian Knot of class and social antagonisms which could only be cut by the sharp sword of revolution." Under the impact of the disintegrating effects of an unsuccessful war, the February Revolution became that sword. The insistence of the Provisional Government upon "war to the victorious end" and its failure to settle the land problem explain the eagerness with which the peasants and soldiers accepted the Bolshevik promise of land and peace, and the downfall of the Kerensky régime. This "inevitable" event, unlike the February Revolution, took the form of a well-planned uprising under strong leadership. The supreme leader, as Chamberlin makes clear, was Lenin, who gauged correctly the combination of forces that would lead to a proletarian revolution. In Lenin's steadfast refusal to wait on history, and in his disinclination merely to ride on the wings of fast-moving social events, there is suggested an answer to the question of genius in history, and also the thought that important social changes cannot be explained in strictly economic categories, but rather in terms of the interaction of objective conditions and leadership.

The Russian Revolution is not as objective as one might wish, despite the author's claim that, "having arrived in Russia for the first time after the conclusion of the period which I describe, I feel that I am in a better position to achieve the attitude of objective detachment than a Russian, whose sympathies are almost inevitably strongly enlisted on one side or the other." Being a foreigner and a non-participant, however, does not necessarily imply an impartial view, and Chamberlin is not an exception to this rule. His bias in the interpretation of certain events sometimes even contradicts the facts to which he himself subscribes.

According to Chamberlin, the Reds defeated the Whites chiefly because "with all their faults of ignorance and inexperience, the former revealed the crude strength of a fresh, young ruling class", while on the other hand, "the Whites, with all their natural advantages of education and military and administrative experience, displayed the decadence of a group on which history had already passed its sentence of condemnation." Yet he is also too prone to explain the survival of the Soviet régime in terms of a "bitter hatred and envy which the poor, illiterate or semi-illiterate majority of the Russian people felt for the well-to-do educated minority."

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Chamberlin's presentation of the Terror is not free from bias. His estimate of 50,000 victims of the Red Terror may be correct, but the accuracy of his statement that "it is far more difficult to gain even an approximate idea of the number of victims of the White Terror than those of the Red Terror" must be questioned. The number of pogrom victims in the Ukraine alone, chiefly victims of the White Terror carried on by Denikin and Petlura, has been variously estimated from 100,000 to 120,000, according to studies to which Chamberlin refers in a bibliographical note. It may be true, as the author suggests, that these figures are probably exaggerated, but in the opinion of this reviewer, the methods of arriving at these totals are certainly not less valid than those employed by Chamberlin in estimating the number of the victims of the Red Terror. The case of the Ukraine is sufficient to give an idea of how extensive the White Terror was.

On occasions Chamberlin is unstinting in praise both of the White leaders and of the White army. In the early adventures of the White army he sees "something at once heroic, romantic, and quixotic." Even General Slaschev, whose sadism and butchery are generally recognized even by the opponents of the Bolsheviks, is only the "eccentric but talented General." There would seem to be vastly more of the heroic, of the romantic, of talent and resourcefulness in the twenty-seven-year old Soviet army leader, Tukhachevskii who defeated Kolchak and knocked so hard at the gates of Warsaw that it took a larger force, under General Weygand, Foch's Chief of Staff, to prevent his capture of the city; yet this is barely suggested in Chamberlin's account. There are numerous other instances of interpretation, of shading and emphasis, which lead one to the conclusion that "objective detachment" is not Chamberlin's forte.

Chamberlin displays a similar attitude in generalizing about the course of Russia's historical development. He believes that because of Russia's backwardness, the country "was quite unsuited for democratic methods of government", but the political maturity displayed by the "illiterates" and "semi-illiterates" through their representatives in Russia's first Parliament (Duma) effectively dispels this notion. For the same reason his statement that "historical experience would have indicated that Russia's destiny was to be 'either Lenin or Kolchak,' not 'neither Lenin nor Kolchak,'" has little validity, except as an apologia for Russian liberals and radicals who must find a rationale for their defeat.

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Russia's Iron Age is an indictment of the Soviet régime and particularly of the policies which accompanied the rapid industrialization and the rise of a collectivistic system of agriculture during 1928-1933. Chamberlin presents at least one negative aspect for every positive aspect of Soviet development. He admits, for instance, that Soviet Russia "has changed the ideas and living habits of the people", yet he attempts to show that the New Russia is in reality the Old Russia under a new mask. He recognizes that "some of the most interesting tests of the effectiveness of Soviet planned economy lie in the future", yet he severely censures it at a moment when Soviet economic development is hardly out of its blue-print stage. It is true that propaganda and repression are practiced in the Soviet Union, but his belief that these are "the twin engines of the Soviet regime" does not square with his statement that the Soviet young generation "has a stake in the new order and is ready to fight for it."

Still, the author's conscious or unconscious bias should not obscure the fact that some of his criticisms carry weight and conviction. His arguments concerning the "anesthetized guinea pigs", his criticism of certain aspects of collectivization, and his hope that "a little leaven of doubt and skepticism might filter into the pure yeast of Communist dogma", raise issues worthy of being pondered over by earnest and unbiased students of the Soviet Union, but even these cannot explain away the fact that *Russia's Iron Age* is essentially a "short view" of the Bolshevik Revolution passing through one of its most difficult periods.

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The Effect of an Unconstitutional Statute. By OLIVER P. FIELD. Minneapolis, The University of Minnesota Press, 1935.—xi, 355 pp. $5.00.

Problems of constitutionality and theories of judicial review have today become commonplaces for the reiterated pronunciamentos of the hustings and the market place. Yet the issues are by no means so simple as that discussion would indicate, and scholars are realizing that all too little exploration has been undertaken of the legal, social and economic effects of the theory of judicial review for any pat answers to be given to the questions raised. In the midst of the distortion and misinformation to which we are now subject, it is a welcome relief to find a thoroughly scholarly and important book such as Professor Field has given us. Realizing to the full that a

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study of the effect and significance of judicial review must include more than its law and must reach into the fields of government, politics and economics, he nevertheless prefers to drive an entering wedge carefully and thoroughly, by restricting his discussion to an examination of one phase of the matter, that of the legal effects of an unconstitutional statute and of the decisions under it. Indeed, he even warns the reader that an entirely complete analysis of all the legal phases would necessarily include more than he has undertaken, for it would imply investigation of all subsequent session laws, court decisions and proposed or adopted constitutional amendments in relation to every state or federal statute declared unconstitutional.

Professor Field traces the different views as to the effect of an unconstitutional statute, beginning with the doctrinaire *void ab initio* theory. A good portion of the book is devoted to an analysis of the numerous cases which develop or modify this theory since its enunciation by Justice Field: "An unconstitutional statute is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed". (*Norton* v. *Shelby County,* 118 U. S. 425, 6 Sup. Ct. Rep. 1121, 30 L. Ed. 178, [1886], quoted by Field, p. 2.) This uncompromising theory, that an unconstitutional statute is "fatally smitten by the constitution at its birth", arose, in the opinion of Professor Field, partly because the early courts had in their minds an ideal pattern of the supremacy of a written constitution over the legislative branch of the government and accordingly sought to make the law move in the direction of that ideal. So, he tells us, many persons feel that the courts have had something to do with "wielding the fatal weapons and dealing the fatal blows" when statutes have been so smitten. The second of the views as to the effect of unconstitutionality discussed in the volume is the theory of the "presumption of validity". Under it a statute is to be given some, but not a full measure of, effect, as in the field of interstate commerce when an invalid congressional act has been held to have sufficient weight to be evidence of the intent of Congress to occupy a part of the regulatory function and so to put the states out of the running in that regard. The third view presented in the book is that of the "case-to-case" theory, which regards a statute as constitutional in some circumstances and unconstitutional in others, or, in other words, as not wholly valid nor yet wholly invalid. This, as Professor Field points out, presents a different problem from that found in a statute of which part is constitutional and another part

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unconstitutional. This theory has the advantage of permitting the development of flexibility and elasticity in the law, but on the other hand has the disadvantage of making it nearly impossible to predict the outcome of any situation, as has been repeatedly shown in the vagaries of the "due process" cases.

The developments of these theories are traced throughout cases in the courts over a period of years. Then the status of private corporations or of municipal corporations organized under an unconstitutional statute are analyzed, as well as the effect of such a statute on the law of public officers and on the law of government bonds and private promises and on taxation of individuals. The discussion of *res adjudicata, stare decisis* and overruled decisions in constitutional law is of particular value in clarification of those difficult problems, as is also the treatment of the questions which arise from mistake of law and unconstitutional statutes, the problems involved in reliance upon decisions and the effect of overruling decisions, and the amendatory, validating and remedial measures available under the law. The thread of interwoven private and public law runs through the analysis, but Professor Field does not tangle nor twist it, nor ever lose sight of his pattern.

Another thread runs throughout the chapters—that of suggestions for mitigation of the confusion which now exists in the law in regard to unconstitutionality and for improvement of the possibilities of judicial review. This thread is of particular interest and importance in the last chapter on "judicial review as an instrument of government", which throws into high relief the full significance of Professor Field's laborious researches into the opinions of federal and state courts. His suggestions in that chapter are of value to all interested in the theory and practice of constitutional law, for they not only indicate the defects in the operation of judicial review in regard to both the government and private litigants, but also point the way to some of the things that may be done to ameliorate the situation. It is to be hoped that further suggestion will be forthcoming to amplify on the social and economic side what Professor Field has so well begun from the legal approach. Then the courts may take up the challenge and realize their serious governmental responsibility of making judicial review operate intelligently without the technical restrictions by which its value is now so limited that it seems indeed to be losing its potentialities as an instrument of government.

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The Security Markets. Findings and Recommendations of a Special Staff of the Twentieth Century Fund. Director of Survey: ALFRED L. BERNHEIM. New York, Twentieth Century Fund, Inc., 1935.—xxi, 865 pp. $5.00.

This study of the security markets of the United States represents the complete findings of a staff of experts who were employed by the Twentieth Century Fund during the year 1934. The time, as will be remembered, was one of confusion and doubt in security markets, due to the fact that Congress was planning the revision of our securities legislation which eventually resulted in the Securities Exchange Act of 1934. In order to get the findings before the public promptly, the Twentieth Century Fund obtained the publication of a general report entitled *Stock Market Control* during the year 1934. The present volume, much larger and more detailed than its predecessor, gives data and findings which could only be indicated in the earlier report and some of which were not fully available at that time. The main conclusions, however, are substantially the same as those that were reached in the small preliminary volume, and the book will naturally be regarded as an amplification of its predecessor.

The text itself consists of 719 pages, to which are attached rather less than 150 pages additional, giving useful data concerning the organization and location of the chief stock exchanges of the country, and a few of the facts which have been most relied on in the preparation of the book itself. Generally speaking, the volume is divided into five main parts: the first being expository and entitled "The Functions of the Security Markets"; the second, semi-critical and dealing with the place of the security markets in the economic structure. Part III dealing with the organization of the security markets, and Part IV with the methods of informing the investor are, likewise, descriptive and intended to summarize and to criticize the phases of the existing situation to which they refer. The last part, entitled "Stock Market Control", deals with the conclusions and recommendations which grow out of the work and with a brief critique of the newly enacted Securities Exchange Act of 1934.

In covering the latter field, the editors have thought it well to state that "these conclusions and recommendations were drawn up before the passage of the Securities Exchange Act of 1934"; and there is throughout the section some little indication of a feeling of fear that the community might think the Fund had drawn too heavily

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upon the action of Congress, recommending things that had already been agreed upon. The statement of the editors counteracts this opinion and shows that the Fund had reached an opinion in favor of federal regulation of security exchanges accompanied by regulation of over-the-counter markets and based upon a general federal incorporation act. The Fund had also recognized the desirability of getting uniform treatment of certain important phases of corporation management, including accounting and reporting, as well as the reënactment of legislation relating to brokerage and margin trading. It is interesting to note not only that the Fund puts forward the recommendations upon which it agreed but that it also gives a list of suggestions which it had received but rejected. Among these rejected suggestions are the making of an individual cash deposit on each margin account, the control of the account through variation of interest rates, the prohibition of margin trading, the prohibition of margin operations below a certain figure, the limitation of trading facilities and of hours of trading, as well as various others. These were rejected on the ground that they did not fully meet the situation and were mere stop-gaps for the difficulties to which they related. The antagonism to the idea of prohibiting short selling led to the conclusion that while the practice fails in large measure to perform the functions that are claimed for it, it does not, in the aggregate, produce the evils that are charged to its account.

The Fund, however, feels that some restrictions should be placed upon the size of short operations and that the supervision of short sales should be rather more careful than at the present time. The Fund also asks for the supervision of "specialists" and the prohibition of illegitimate pools in the market. It feels that sources of financial news at the present day are somewhat abused and that more correct and truthful and authentic data should be provided for the public. Other secondary or incidental modifications of previously existing practices are recommended. The Fund, however, finds that the legislation adopted in 1934 attempts to answer the problems discussed in its study at various points and that broad powers have been conferred for the purpose of enlarging and strengthening the control over brokerage operations that has been set up. Some of the expedients to which the government has resorted are given implied approval, while others are evidently viewed as only partial or unsatisfactory. In the main, the authors of the Fund's report evidently feel, and rightly so, that whatever may be attempted by law will be successful only if it has the collaboration

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and the support of the financial community generally. The problem of the new Securities Commission, the Fund feels, will be "merely a by-product of its main objective of preventing the excessive use of credit for the carrying of the entire body of securities".

Although this study bears the marks of haste in some particulars and, like all such studies, carried on by a number of persons, varies greatly in quality as between its different members, it is, on the whole, a very useful survey of a great problem to which the public has given an insufficient amount of attention. It is sufficiently clearly expressed to permit intelligent reading by almost any average man and it is, therefore, a valuable medium in the education of the public with regard to the whole question of stock exchanges and their use. Few persons who have followed the events of the past two years can feel that the present Securities Exchange Act is of more than transitory importance. It may result in an improvement of market conditions, or it may not. Whether it will do so or not is largely a question of the degree of intelligence with which its work is supervised by the public. The great merit of what the Twentieth Century Fund has done is that it has furnished in compact form the basis which the public needs for reaching an intelligent conclusion in this field.

H. PARKER WILLIS

Economic Planning. By G. D. H. COLE. New York, Alfred A. Knopf, 1935.—xiii, 384, vi pp. $3.00.

The reader of any book by Mr. Cole is certain of food for thought —of keen insights and thoughtful positions well and forcefully argued, with a truly British calmness of temper. One is likely to find freshness too; for the evolution of Mr. Cole's positions leaves one expecting the unexpected, even in the treatment of familiar themes. The conscious goal does not change, but the method of attaining it does. Following his guild-socialist phase came his *Guide through World Chaos,* in which he presented one of the most convincing demonstrations of the inability of the parliamentary method to bring about a fundamental transformation of society. And now comes this book in which he announces himself an unrepentant guild socialist, but espouses the parliamentary method of change as the tool one must perforce work with. He even conceives the American constitutional system as transforming itself sufficiently to permit real national planning—though the extent of the transformation would be a revelation to the Liberty League.

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Needless to say, it is socialist and not capitalist planning he contemplates. The latter can only work restrictively, with the government limited to monetary inflation and to filling the gaps with public works. Real planning involves the power to say what shall be produced as well as what shall not be; and to balance total incomes against total production.

To an economist, perhaps the most interesting point in this highly interesting volume is the scheme of social accountancy which it adumbrates. Starting with the proposition that wage costs are an exaggerated measure of the social cost of employing otherwise idle labor, the author looks toward a system in which the social worth-whileness of producing anything would be determined by a sort of social opportunity cost representing marginal power to produce and not necessarily tied to money payments of any sort. He anticipates the use of ergs as units but does not develop the concept.

He also expects a transitional economy in which labor costs of production continue to be measured in money wages and salaries, but where these are reduced so as to constitute only a fraction of the workers' incomes, the rest being a social dividend based on mere membership in the society and demonstrated willingness to work. The small wages and salaries are apparently connected with an unconvincing theory that true marginal productivities are small because a major part of the result is attributable to the social heritage of techniques which the worker utilizes. This appears to rest on the assumption that the sum of the imputed contributions must equal the whole, whereas it is more logical to suppose that, especially where the concept is broadened as Mr. Cole broadens it, the sum of the imputed contributions would absorb the whole product several times over. Possibly Mr. Cole went farther with this analysis in the chapters which were omitted from the book in the interest of appealing to a wider circle of readers.

It is a reviewer's unpleasant duty to point out errors. A minor one appears to be the statement that under orthodox economics " . . . the highest economic efficiency is reached when people are prepared to pay more for the *aggregate* of goods and services than they would be prepared to pay for any other *aggregate* that could be produced. . . ." [1] This seems to be an unwarranted conclusion from the correct statement: " The test of the ' rightness ' or ' wrongness ' in an economic sense of producing *any particular thing* is simply

[1] P. 26, italics in this and the following quotation are the reviewer's.

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whether it will fetch a higher price than any other thing that could be produced with an equal expenditure of productive resources."

A technical exception might be entered to the implication that N. R. A. code authorities were generally or universally granted powers to fix minimum prices and other similar powers (pp. 144, 159, 231). This, and the statement that the N. R. A. "allowed the American manufacturers to regulate output and prices to their hearts' content" would come as something of a surprise to those who took part in the struggle to limit these privileges, or who listened to hearings in which representatives of industry protested against the niggardliness of the Administration in granting such privileges or in implementing such as had been theoretically granted; while at the same time they avoided demands for anything which would admittedly result in limiting output. This, however, does not seriously vitiate Mr. Cole's position as to the naturally restrictive character of capitalist planning. Whether this tendency can ever be overcome is a most perplexing question; and much hinges on the answer.

J. M. CLARK

The Problems of the Foreign Exchanges. By L. L. B. ANGAS. New York, Alfred A. Knopf, 1935.—xiv, 316 pp. $3.75.

It cannot be said that we have had a stable foreign exchange situation since the outbreak of the World War in 1914, although a degree of stabilization was attained between certain countries from 1925 to about the middle of 1931, after which a general collapse occurred which was, in turn, followed by the adoption of numerous and elaborate forms of exchange control, clearing agreements and exchange regulation. Among the causes which have been suggested, from time to time, as contributing to the breakdown are: the war debts, the gold standard, tariff walls, decline of foreign trade, unstable monetary systems, lack of international coöperation and speculation in securities. Toward an understanding of this situation Major Angas has contributed through his book, *The Problems of the Foreign Exchanges.*

The title of this book suggests a general study of the foreign exchanges but, in fact, its scope is much broader than the title would seem to indicate. Major Angas has given more attention to the mechanism of the gold and paper standards—their merits and defects—than to a general discussion of the exchanges. More specifically the book is divided into four main sections: First Principles, Mechan-

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ism of Gold and Paper Exchanges, Gold Compared with Paper, and Practical Problems. Of these parts, two and three received more consideration than the others.

Major Angas sees our economic system suffering from six major monetary diseases which are responsible in the main for the "unhealthy booms and depressions" to which we have been subjected in the past. These diseases are set forth in what is regarded as "perhaps the most important chapter in the book." They are:

1. The supply of metallic money does not keep pace with the long-term industrial demand.
2. Although the short-term demand for money fluctuates considerably, the short-term supply is not usually adjusted to demand.
3. When supply ought most to be increased it is usually contracted.
4. The supply of money is largely governed by haphazard confidence.
5. The use of a dual form of money (legal tender and bank credit) gives rise to a Bank Credit Cycle.
6. The exportability of bank reserves.

These diseases the author believes should be curable through proper management, but he holds out no hope for the attainment of such ends in the future since he believes the international gold standard is manipulated to stabilize the foreign exchanges rather than to encourage a greater volume of domestic trade or to secure a stable internal price level.

The gold standard is not only "a powerful cause of bad trade", but it is the obstacle which prevents largely "the institution of those reforms which are necessary to secure continuously high profits and employment." In short "these six subtle diseases in the monetary system . . . are certainly the cause of recurrent unemployment and continuous poverty. They cannot be cured under an international standard. The gold standard as we know it must therefore be abolished."

Stability of the exchanges and stable internal prices he holds are incompatible. "Instability of the exchanges is the price of monetary stability: instability of money is the price of stabilized exchanges." Of these it is held that monetary stability is paramount to exchange stability since internal trade is of much greater importance than foreign trade. If it were a mere matter of choice, there would be no question but that we should also emphasize the desirability of internal price stability; but is it so simple? What proof have we

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that a stable domestic price level could be realized under the conditions described by the writer? There is good reason to doubt the possibility of securing a monetary standard, even within a given country, that will not change in purchasing power. The advocates of stable money for the most part contemplate changes in the quantity or content of the money, which is a recognition of the fact that the value or purchasing power of money is changing. There is much to be said in favor of securing as favorable exchange as possible, inasmuch as it is not, as some would have us believe, merely a choice between two evils.

Gold is "by far the best international currency that the wit of man is able to devise at present." Special emphasis is placed on the word "international". Yet in another paragraph he says, "It is impossible, in view of our modern banking system and monetary habits which have grown up out of past history, either to cure unemployment or to have continuous good trade until the gold standard as we know it is abolished." One must be left in considerable doubt as regards just what the Major does advocate in this regard when we bear in mind that in chapter five he made a meticulous and in some respects a forced detailed classification of seven different varieties of the gold standard, only to reject in effect all of them. It is clear that he advocates a paper standard for domestic or internal use and while he gives lip service to gold for an international standard, does he not really prefer an international paper standard? In fact he says, "Paper will be better than gold not only for the nation as a whole, but also for foreign traders and international financiers."

An interesting chapter is devoted to a discussion of the theory of the purchasing power parity in which is set forth causes for the divergence of paper exchange rates from purchasing power parity. The writer makes an over-extended use of italics for purposes of emphasis. His sevenfold classification of gold is confusing and of no particular value. One may well question the validity of his conclusion that the gold standard is responsible for the rise of the business cycle as well as the idea that the problem of the foreign exchanges would not exist either if there were no banking system or if there were only one universal bank. Finally he condemns the gold standard but does little more than merely assert a preference for a paper standard.

JOHN M. CHAPMAN

COLUMBIA UNIVERSITY

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Cases on International Law. By CHARLES G. FENWICK. Chicago, Callaghan and Company, 1935.—xxiii, 815 pp. $5.25.

A case book is a distinctively individual thing; no case book teaches itself. Scarcely any two teachers of any legal subject would wholly agree on the arrangement or the selection of materials. With a subject like international law, the difficulties are enhanced. International law is taught in law schools, in political science faculties and in colleges. No case book can be perfectly adapted to three such different pedagogic demands. Professor Fenwick teaches international law in a college; this book is one of the National Case Book Series primarily designed for law school use. The case system is not standardized; it is not all Langdellian nor all Llewellynian. *De gustibus non disputandum.* It has, however, been commonly supposed that the case system reflects a theory that the student in actual experience meets a set of facts, not a statement of principles, and should be trained to handle problems in that way instead of being fed a predigested pellet out of a spoon. Professor Fenwick's theory seems to be a compromise; the student is to use his mind but is to be given a substantial boost on his way. The author's preface indicates that he believes there is such a thing as "the whole law"; "only an encyclopedic digest of reported cases can assure the student that he has the materials for making an adequate statement of the law". The reviewer believes that the student is well off without such assurance but that it would be wholly illusory if obtained in that way. But Professor Fenwick is right in saying that a case book can only give examples. Such examples by themselves serve merely to raise problems; they are teaching tools, no more. The reviewer's own preference is for a case book which serves merely that function, but Professor Fenwick suggests that he seeks to give the embryo practicing attorney an introduction to international law as applied by the national courts before which he presumably will practice. Apparently for this reason "as a practical matter", the author has confined the selected decisions of national courts "almost entirely to American and British cases". The reviewer prefers the recent trend evidenced by Dickinson and Hudson to indicate the universality of international law by selections from other jurisdictions. Such materials are now readily available on most of the topics covered. Others may prefer Professor Fenwick's plan which includes, to be sure, the use of decisions of international courts.

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"A somewhat novel feature of the collection", Professor Fenwick suggests in his preface, "is the series of introductory notes which precede each chapter subdivision. In these notes the general principle of law is first stated, and then queries are raised indicating the issue presented by the particular case. By this means the student is made aware of his problem and is saved the loss of time due to the obscurity of so many international cases. While the introductory notes are not intended to dispense with reference to one or other of the standard treatises where time permits, they should nevertheless serve to give definiteness to class discussions and to permit a wider range of topics to be covered."

Without venturing any further personal opinion on the pedagogic theory underlying these statements, the reviewer may note that most of the statements of general principle and the queries are well put. Exception may be taken, however, to the introductory notes on "Nationality by birth" (p. 134), which might confuse the student (not an unwholesome but here an unintentional result); on "Nationality of married women and children" (p. 157), which heightens the confusion as to the national basis for nationality laws; on "Nationality of business associations" (p. 165), which erroneously states a "general rule"; on the Blackmer case (p. 171), which suggests an international rather than the national limitation in question; on the Cutting case (p. 199), which gives an erroneous idea of the facts; on the extent of the marginal sea (p. 485); on "Legal form and effect of treaties" (p. 552), which does not mention the exchange or deposit of ratifications; on war problems in opening chapters xviii, xix, and xxi, which attribute too much to the Covenant of the League; and on "Pacific blockade" (p. 663), which fails to note that the Venezuelan blockade of 1902 became a blockade by belligerent right.

Professor Fenwick adds some very useful footnotes to many of his leading cases, briefing supplementary cases for the student's benefit. This type of treatment and the character of his general footnotes, which generally confine references to a few standard works like his own, Hyde's and Oppenheim's and the reports of the Harvard Research in International Law, with scattered references to various monographs and a few articles, suggest a design to make the book useful to institutions possessed of only limited library facilities.

The selection and arrangement of topics is along traditional lines. Materials are included on the laws of war and neutrality to "give the student an idea of their importance in the development of inter-

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national law and of the difficulties attending the attempt, recently being renewed, to define in terms of law relationships as abnormal and paradoxical as those created by war" (p. iv). The field of international organization—except for the judicial side—is not covered. The book has more subdivision captions in bold-faced type than is usual, which makes it easier for the student to fit each case into a convenient pigeonhole.

It is perhaps true that the recent case books of Dickinson and Hudson are adapted more to law school than to college teaching. The reviewer would suppose this volume to be better adapted to the latter type of institution or to a law school in which only a brief course on international law is offered. In this field the appearance of a case book containing a good many recent decisions will be welcomed.

PHILIP C. JESSUP

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BOOK NOTES

In the Status of the Union Act of June 1934, the Union of South Africa was explicitly declared to be a sovereign and independent state. The Act was the work of a coalition government headed by General Hertzog and General Smuts and marked the culmination of a long period of acute party strife in which the chief issue was the relationship of the Union to Great Britain. Although this issue was formally settled in the Act, there still remains one sore spot in the relationship between the two countries. Embedded in the Union are three extensive strips of native territories which are protectorates under the control of the British government: Basutoland, Bechuanaland and Swaziland. The Nationalists resent this interposition of British territory. They claim that economically and socially South Africa below the Zambezi River is a unit. Furthermore, in order to work out a satisfactory and consistent native policy throughout the Union, they must have control over all the natives. Throughout their history there has always been dissension among South Africans over native policies. The discord was so great at the Union Convention in 1909 that the thorny question of transferring the protectorates from Imperial to Union control was postponed indefinitely. Under the recent fusion government of 1934, both General Hertzog and General Smuts felt that the time had arrived to make arrangements for the immediate transfer of the protectorates. Their proposals have stirred up a heated discussion on the subject both in England and South Africa. The problem is a serious one and fraught with danger both for the harmonious working of the new fusion government and for the continuance of good relations between the Union and Great Britain. We are fortunate to have both sides of this vital controversy admirably presented in *The Protectorates of South Africa: The Question of Their Transfer to the Union* by Margery Perham and Lionel Curtis (London, Humphrey Milford, Oxford University Press; New York, Oxford University Press, 1935; 119 pp. $2.00). Mr. Curtis presents the arguments in favor of immediate transfer. He speaks from a wide experience both in South African and Imperial affairs. He was at one time Assistant Colonial Secretary to the Transvaal and member of the Transvaal Legislative Council. He took an active part in the discussion of the protectorate question in 1909. In the book now under consideration, he gives a realistic and

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convincing plea for trusting the young South Africans; only with the good will of the South Africans, he argues, can the native question be solved. The protectorates are after all at the mercy of the Union. It would be better for white and black alike if South Africa were left to deal with its own problems and to develop a consistent and continuous native policy throughout all the country south of the Zambezi River. Miss Perham presents with equal force the other side of the case, i. e., the point of view of the natives. She points out that the British government is in a special sense a guardian and trustee of the natives in the protectorates. This trusteeship sprang in the first instance, in many cases, from the petitions of native chiefs. It is evidenced by definite agreements and treaties. Furthermore, the natives in the protectorates were loyal to the British government throughout the Boer War. They have repeatedly signified their preference for control by the British government and have recently protested strongly against transfer to the Union. Miss Perham, therefore, argues that it would be against the honor and traditions of the British government and also against international morality to relinquish the trust by any such transfer in the face of express opposition of the natives. The above are only the main arguments presented by Miss Perham and Mr. Curtis. Enough, however, has been given here to illustrate the complexity and delicacy of a situation which challenges the statesmanship and sense of fair play of both sides.—LOIS A. C. RAPHAEL, Washington, D. C.

In *South Africa, 1652-1933* (London, Thornton Butterworth, Ltd., 1933; vii, 256 pp. 2s. 6d.), by Alan F. Hattersley, Professor of History at Natal University College, the reader finds a brief and delightfully written survey of South African history by a man who apparently knows the country, its people and its problems. The book is particularly helpful as the background for an understanding of present conditions in South Africa. The people are confronted today by complex economic and racial problems. Some of these difficulties have arisen from the recent world-wide depression. Some have their roots deep in old racial rivalries and antagonisms of the past. Professor Hattersley shows how, even before the coming of the British, South Africa was a land of acute racial problems. This complex situation was further aggravated, after their arrival, by the misunderstandings and disagreements between the newcomers and the Boer settlers, especially in regard to native policies. Professor Hattersley, then, traces the story of the growing antagonism between Boer and Briton to its climax in the Boer War. He shows how that bitter

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conflict has left scars today. There are still many misunderstandings and disagreements between South African factions. The problem of the relationship between the white races and the natives is still unsettled, and dangerous controversies may arise over it in the future. Nevertheless, South Africa is now a united self-governing Dominion. While Professor Hattersley deals on one side with the disruptive forces in the country, he traces with equal care the development of the movement towards unity from the early abortive attempts at confederation to the attainment of the present Dominion status. His last chapter gives a succinct description of the Union today. It is not easy to compress the history of 281 years into 245 pages. Professor Hattersley has been obliged to make sacrifices. He has had to gloss over many controversies. He has focused his attention chiefly on the internal aspects of the story and has merely hinted at the great diplomatic struggles of outside nations for supremacy in South Africa. He has succeeded admirably, however, in giving a clear and comprehensive interpretation of the internal history of the country.—Lois A. C. Raphael, Washington, D. C.

Numerous histories have been written about the various aspects of the internal struggle for supremacy in South Africa. Dr. R. I. Lovell, however, has approached the subject after careful and fruitful research in the field of European diplomatic relations. In the course of these studies, he has come to realize that the history of international and intrastate rivalry in South Africa can be understood best when it is considered as an integral part of the history of European diplomacy. His book, *The Struggle for South Africa: A Study in Economic Imperialism, 1875-1899* ([published under the auspices of the Bureau of International Research of Harvard University and Radcliffe College], New York, The Macmillan Co., 1934; xv, 438 pp. $4.00), is an admirable pioneer attempt to relate the story of international rivalry in South Africa in its wide context. It gives evidence of careful preparation. He has made good use of the British and German documents, and his chapter on the diplomacy of the South African War is particularly valuable because of the new light thrown on the conflict by a study of recently published Milner Papers. Furthermore, he has taken pains to reconstruct the story from the point of view of contemporary opinion as he has gleaned it from memoirs, newspapers and periodicals. Anyone familiar with South African history will realize the great difficulties which confronted Dr. Lovell. Many aspects of the struggle for South Africa are highly controversial. Furthermore, so much was happening

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simultaneously that it is hard to unravel the tangled events of this intricate story. As Dr. Lovell himself admits, "too many names, facts, dates and details" have perhaps been given (p. xi). The monograph demands the close attention of the reader, but the reader is well rewarded for his effort by the real merits of the book. The author has patiently explored the dark corners of many controversial points. He has succeeded in throwing new light on some of them and in opening the way for further research. His point of view is refreshing and his conclusions challenging. While it is too early yet to give a fully rounded and impartial history of this crowded period, Dr. Lovell's book has set a high standard for further work in this field.—LOIS A. C. RAPHAEL, Washington, D. C.

As the sub-title shows, Leonard W. Doob's *Propaganda: Its Psychology and Technique* (New York, Henry Holt and Company, 1935; x, 424 pp. $2.40) is restricted to the psychological analysis of propaganda and excludes the cultural aspects of the subject. The scheme of treatment is to devote the first 150 pages to theoretical analysis and to pass to specific examples of the kinds and vehicles of modern propaganda. Dr. Doob undertakes to state the theory of propaganda in terms of the psychology of "suggestion". This slippery concept is nailed down on page 54 in these words: "suggestion results from the manipulation of stimulus-situations in such a way that, through the consequent arousal of pre-existing, related attitudes there occurs within the mental field a new integration which would not have occurred under different stimulus-situations". Influenced by the current "*Gestalt*" doctrines of perception, he enunciates the principle that "The propagandist makes his stimulus-situation stand out from its competing ground". Even these snips from the theoretical section will convey to the initiated the idea that Dr. Doob handles psychological vocabulary with expertness. No doubt some of the distinctions which are drawn will stick in common usage. It is fortunate to classify types of propaganda into "revealed", "delayed revealed", or "concealed". Why propaganda should be given an "unintentional" subdivision is, however, difficult to fathom. Vivid and important propagandas are chosen for the application of the principles, which by the way, are neatly segregated into an appendix and alluded to by number in the text. A chapter is devoted to Communism in the United States, and another to National Socialism in Germany. Residence in Germany enables Dr. Doob to say his say about Nazi propaganda with more than usual pungency. There is a conspicuous dearth of textbook material in this rapidly expanding

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field, and this straightforward and conscientiously written treatise will be very serviceable.—HAROLD D. LASSWELL, The University of Chicago.

In *Social Organization and Disorganization,* by Stuart A. Queen, Walter B. Bodenhafer and Ernest B. Harper (New York, Thomas Y. Crowell Company, 1935; xii, 653 pp. $3.50), the authors venture upon the task of showing the contribution that sociology can make to the interpretation and solution of social problems. They view social disorganization as a breakdown in social relationships, which in turn effects disintegration and maladjustment in group-life, institutions and personalities. An analysis of social organization is followed by an extensive study of the way in which changes in social relationships produce problem-situations in the family, community, interest-groups, economic and political institutions, and personality adjustment. By focusing their attention upon a strictly sociological interpretation of social disorganization the authors have achieved a unity and consistency that is lacking in most textbooks dealing with social problems. The chapter on interest-groups is a valuable contribution to a neglected subject.—THEODORE ABEL, Columbia University.

Karl Mannheim's book on *Man and Society in the Era of Reconstruction—Mensch und Gesellschaft im Zeitalter des Umbaus* (Leiden, A. W. Sijthoff's Uitbeversmaatschappij, 1935; xviii, 208 pp. 5 H. fl.)—is composed of three essays entitled: "Rational and Irrational Elements in our Society", "The Sociological Causes of the Contemporary Cultural Crisis", and "Thought on the Level of Planning". The first two essays embody an analysis of the present-day ills of the world, centering mainly upon the growth of irrationality and the destruction of the élite. They illustrate well the approach of *Wissenssoziologie,* of which Mannheim is a leading representative, to the analysis of social phenomena. Valuable in parts, the analysis, however, is handicapped by the fact that the author, who is an exile, makes a disguised attempt to defend his country by projecting the "ills" which caused the rise of National Socialism upon the world at large. In the third essay, the well-known critic of Utopia outlines a "utopia" of his own to be achieved by means of "strategic planning" based upon the anticipation of new developments, and proceeding by the "structural mode of thinking" that recognizes the interdependence of social phenomena. Such planning would require the reorganization of the social sciences, which henceforth will have to abandon "particularistic thinking" and abstractions, and devise

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methods of discovering "key positions" and new "*principia media*" (general forces, correlations) in the process of formation. At the same time a readjustment of the "thought and will" of the individual will be necessary by a process of education utilizing the findings of behaviorism and structural psychology, under the guidance of an enlightened minority. Like all utopians Mannheim is very vague as to the way by which the requisite conditions can be realized, particularly, how the enlightened minority can be made to exercise dictatorial power which will not be "dictatorial". The essay contains valuable criticism of contemporary trends in the social sciences, but otherwise is a case of well-organized, at times brilliant, wishful reasoning.—THEODORE ABEL, Columbia University.

Mr. Maurice Taylor's *The Social Cost of Industrial Insurance* (New York, Alfred A. Knopf, 1933; xx, 421, xviii pp. $3.25), a study of the rise and characteristics of industrial insurance in this country, should be of interest to every student of social insurance. The author began the study when, as director of the Jewish Family Welfare Association of Boston, he learned that industrial insurance premiums were absorbing one sixth of the relief distributed by the association. He raises the question whether the heavy cost of industrial insurance justifies the sacrifices which millions of persons in the lower income groups make in order to maintain it. Industrial insurance, which dates from 1875 in the United States, is a type of life insurance written by private insurance companies for wage earners and their families without medical examination and usually in small amounts. Premiums are generally collected by agents on a weekly basis at the home of the insured, a procedure which entails high administrative cost. Though numerous companies write industrial insurance, more than 80 per cent of the business in the United States is done by the Metropolitan Life Insurance Company, the Prudential Insurance Company and the John Hancock Mutual Life Insurance Company. In July 1933, 70 million policies covering $17 billion worth of insurance were in force; premiums of $750 million were being collected annually; and nearly 80 per cent of all potentially eligible persons were covered. The author finds that this broad coverage does not evidence the ability of policyholders to pay the premiums but points rather to the effectiveness of the high-pressure methods used in its sale. The insurance companies feel that they perform a social service in making persons in the lower income groups insurance-conscious and in helping them to develop habits of thrift. Actually, for a large proportion of the policyholders the industrial

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policy is so burdensome that it tends to create the very poverty it was designed to ameliorate. A large proportion of policies are accordingly abandoned, and the policyholder suffers a total loss. The author discloses that in contrast with an average of between $300 million and $400 million annually, lapsed policies amounted to nearly $2,500,000,000 in 1932 and accounted for $174 of every $1,000 insurance in force. Mr. Taylor contends that the "high lapse rate is characteristic of industrial insurance all over the world, indicating either a fundamental defect in its conduct or a general inability of the working class to carry insurance." He feels that industrial insurance requires drastic modifications if it is to approach the true social purpose of any system of insurance, and that it should be a function of government to act as insurer for persons in the lower income groups. The book is a thoroughgoing study, replete with statistical information taken largely from the records of insurance companies themselves. Especially at this time, with social security to the fore in public attention, the implications of this study for an integrated social insurance policy should receive careful consideration. —BRYCE M. STEWART, Industrial Relations Counselors, Inc., New York City.

Each year, since the publication of the first annual volume in 1928, students and observers of world affairs look forward to the appearance of the latest edition of the *Political Handbook of the World* for authoritative information on the rulers, legislatures, political parties and newspapers of the world. The issue for 1936 (New York, Harper & Brothers, 1936; 207 pp. $2.50), again edited by Walter H. Mallory for the Council on Foreign Relations, includes all the excellent features of the previous editions plus a number of additional useful items. There are sections on the make-up and functions of the League of Nations, the Permanent Court and the International Labor Organization. There is information concerning such small states as Liechtenstein, Monaco and Yemen. The foreign-language press of the United States is listed. The programs of the chief political parties in the various countries are more thoroughly summarized than before. The material is brought up to the date of the proclamation of Edward VIII as king of England on January 22, 1936. Were one to make suggestions for further improvement of the series, only minor points could be mentioned. It would be useful if the circulation figures for the leading papers of all countries, not just the United States, could be ascertained. Despite the amount of extra work involved, an effort might be made to give the first names of all,

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not merely most, of the leaders mentioned. It is not entirely clear why it should be "impossible to quote or refer to" the sources used in the preparation of the handbook. Might not some of the official, if not the private, sources be listed in an appendix of a few pages? Certainly more than one student of current events would be grateful for this additional bibliographical aid.—WALTER CONSUELO LANGSAM, Columbia University.

In an interesting and useful little volume entitled *Peace in the Balkans: The Movement Towards International Organization in the Balkans* (New York, Oxford University Press, 1935; ix, 209 pp. $2.00) Professor Norman J. Padelford of Colgate University offers a pioneer study of what may be termed the recent trend toward coöperation rather than conflict in the Balkans. After a ten-page history of the idea of Balkan federation from about 1820 until 1928, attention is centered, for the major portion of the book, on an analysis of the Balkan Conferences which have been held annually since 1930 in one or another of the Balkan capitals. Finally, there is a discussion of the factors underlying the adoption of the Balkan Pact in 1934 and of the relations of the Balkan Entente to the Little Entente and the Great Powers. An appendix conveniently reproduces the chief documents relevant to the story. The general tone of the work is more optimistic than the facts presented would seem to warrant, for the author makes it clear that the proposals of the conferences are not binding on the governments of the states participating, that there can be little hope of any permanent Balkan settlement so long as Bulgaria's special grievances growing out of the Treaty of Neuilly remain unadjusted, and that any attempts at Balkan union must invariably encounter such oppositional forces as proposals for a Danubian or an Eastern-European federation and for closer coöperation among the members of the Little Entente as a Central-European rather than a Balkan unit. In this connection, incidentally, Professor Padelford might well, in my opinion, have devoted more space to the relations between the Great Powers and the Balkan states, both individually and collectively. Certainly the influences of Italy and France and the Soviet Union were of more importance in the shaping of Balkan attitudes and events than appears from this study. The last chapter in the book is a compact and unusually enlightening summary of the forces which may eventually decide the question "Peace or War?" in the Balkans.—WALTER CONSUELO LANGSAM, Columbia University.

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HOWARD LEE McBAIN

In a spirit of profound sadness the editors of the POLITICAL SCIENCE QUARTERLY pay this last tribute to their colleague Howard Lee McBain, Dean of the Faculty of Political Science of Columbia University and a Trustee of the Academy of Political Science, who died on May seventh last in the fifty-sixth year of his age.

Born in Toronto, Dr. McBain was graduated from Richmond College in Virginia in 1900 and received the degrees of Master of Arts and Doctor of Philosophy at Columbia in 1905 and 1907 respectively. After serving as Instructor in Political Science and Dean of the College of Political Science in George Washington University, he taught for several years at the University of Wisconsin as Associate Professor of Political Science. In 1913 he joined the Columbia Faculty of Political Science, in which he remained until his death, holding successively the positions of Associate Professor of Municipal Science and Administration, Eaton Professor of the same subject, Ruggles Professor of Constitutional Law, and Dean of the Graduate Faculties of Political Science, Philosophy and Pure Science. He received the honorary degree of Doctor of Laws from Columbia in 1929 and from Richmond College in 1932.

Dr. McBain wrote extensively and with authority on government and public law. His books include *De Witt Clinton and the Origin of the Spoils System in New York, Government and Politics in Virginia, American City Progress and the Law* and *Prohibition, Legal and Illegal.* His most systematic work, *The Law and the Practice of Municipal Home Rule,* published in 1916, became at once the standard treatise in its field. Nine years ago, before the Constitution had become the subject of such vigorous debate as it has been in the past two years, Dr. McBain wrote a vivid and provocative volume entitled *The Living Constitution.* At the time of his death he was engaged upon a revision of this book which would take account of all the more important events in what he called "the recent abundant life of the Constitution." His critical comment, in writing and speech, on decisions of the Supreme Court affecting various phases

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of the New Deal has attracted wide attention. Several of the many articles which he wrote on legal and political subjects appeared in the POLITICAL SCIENCE QUARTERLY.

Dr. McBain gave generously of his time, thought and energy to public work, in which he rendered distinguished services. He acted as Special Corporation Counsel for the City of New York before the New York State Constitutional Convention of 1915. He was Chairman of the Finance Committee of the Board of Education of the City of New York in 1916-17. He served as Secretary of the Charter Revision Commission of the City of New York from 1921 to 1923. As Chairman of the Citizens Committee on the Status of the Branch Librarians of the Public Libraries of the City of New York for the past seven years he labored to secure more adequate recognition of this group of devoted public servants. The nation has reason to lament the passing of this public-spirited scholar at the height of his mental powers.

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